

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 74-2439

To be argued by  
E. THOMAS BOYLE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

ARTURO SANCHEZ,

Appellant.

Docket No. 74-2439

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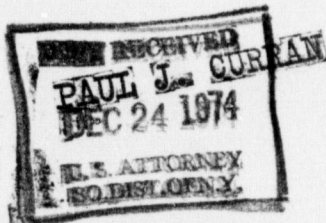
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APPENDIX TO APPELLANT'S BRIEF

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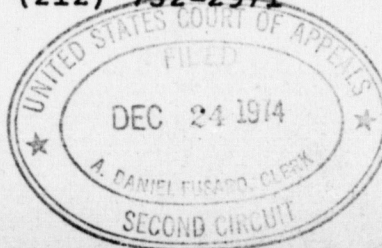
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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



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THE LEGAL AID SOCIETY,  
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CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE CARTER

DUFFY - 1/30/73

73 JAN. 48

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.: X 6562
vs.		Barbara A. Rowan, AUSA
1) ANDRES SANCHEZ	ct. 1	
2) ARTURO SANCHEZ	ct. 1 & 2	
3) JOSE SALEST VALVERDI, a/k/a SALCITA	ct. 1 & 2	
		For Defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed 3/24/73 1-2	Marshal				
Violation	Docket fee				
Title 21					
Sec. 846 conspiracy to violate narcotic laws (ct. 1) 812, 841(a)(1), 841(b)(1)(A) distribute and possess with intent to distribute cocaine, II					
TWO COUNTS					

DATE	PROCEEDINGS
1-15-73	Filed Indictment VALVERDI- B/W ordered. -- Stewart, J.
1-15-73	B/W issued.
1-17-73	Andres Sanchez- Paul R. Grand, Esq. assigned as counsel under CJA - Bail fixed in the sum of \$10,000. Deft. remanded in lieu of bail. Adj. to 1-22-73 Arturo Sanchez- Stuart Holtzman, Esq. of Legal Aid, assigned as counsel under CJA. Bail continued. Adj. to 1-22-73 Stewart, J.
1-18-73	Andres Sanchez- Filed affidavit for writ of habeas Corpus writ iss-ret 1-22-73 By AUSA Barbara A. Rowan
1-22-73	Arturo Sanchez- (Atty. present) Interpreter Erny Trumpy present. Deft. pleads not guilty. 10 days for motions. Bail reduced to \$10,000. secured by 10%. Deft. to surrender his passport to A.U.S.A.
	--- over ---

ONLY COPY AVAILABLE



DATE	PROCEEDINGS
1-22-73	Andres Sanchez- produced on writ. (Atty. present) The Court directs entry of not guilty plea. Writ satisfied. Court directs a retainer be held on deft. 10 days for motions. VALVERDI- The Court directs entry of not guilty plea. case assigned to Judge Carter. --- Metzner, J.
1-24-73	<i>Arturo</i> Sanchez-Filed appearance bond in the amount of \$10,000 secured by \$1,000 surety Irma Baeza.
1-30-73	Arturo Sanchez- Filed the following papers received from Magistrate: docket entry sheet criminal complaint Magistrates warrent of arrest disposition sheet
1-31-73	Andres Sanchez- Filed affdvt. of Walter M. Phillips, Jr., AUSA for a Writ of H.C. - Writ issued - ret. 2-5-73
2-5-73	ARTURO SANCHEZ- Filed order that the defendant's bail limits be extended to incl. Patterson, New Jersey, the place of his employment. -- Carter, J.
2/27/73	<i>Filed Petition for writ of Habeas Corpus Writ satisfied - 1/22/73</i>
2-27-73	Arturo Sanchez- Filed remand dated 1-22-73 (released on bail 1-24-73)
4-22-73	ANDRES A. SANCHEZ - (Atty. present) deft produced on writ. Writ satisfied. Court directs a detainer be held on deft. Court direct entry of not guilty plea. 10 days for motions.
4-24-73	ARTURO SANCHEZ - Filed appearance bond in the sum of \$10,000. secured by \$1,000. cash (receipt #21562) --Clerk.
5-15-73	Filed Govt's notice of readiness for trial.
6-11-73	ANDREA SANCHEZ - Filed appointment of counsel pur. CJA, Paul R. Grand 777 3rd ave NYC
6-20-73	SANCHEZ - Filed appointment of Libya Clancy 5-24-73 as interpreter. Duffy, J.
6-20-73	SANCHEZ - Mailed copy 1 of the CJA form 21 to the A.O. for payment 6-18-73 Duffy, J.
6-20-73	SANCHEZ - Filed appointment of Libya Clancy as interpreter 2-5-73 under CJA Duffy, J.
6-20-73	SANCHEZ - Mailed copy 1 form 21 of the CJA to the A.O. for payment. Duffy, J.
8-7-73	ALL DEFTS - Filed afdvt of V. Pamela Davis AUSA dtd 7-30-73
8-29-73	ANDRES SANCHES - Mailed copy 1 CJA 21 to Adm. office
8-29-73	ANDRES SANCHES - Filed appointment of interpreter under CJA 21
10-10-73	Filed affdvt. of V. Pamela Davis, AUSA in support of govt's application for adjournment.
10-12-73	ANDRE SANCHEZ - Filed affdvt. of Paul R. Grand Esq. in oposition to govts application for adjournment.
10-12-73	Pre-Trial conference held before Judge Duffy. Case scheduled for trial 10-15-73. Due to another trial in progress this trial will not go forward on 10-15-73. Govt's motion for postponement due to illness of witness. Deft's move to dismiss indictment Decision Reserved.....

Cont'd on page .3.

DATE	PROCEEDINGS
10-15-73	filed memo endorsed on affdvt. of V.P. Davis, AUSA dtd. 10-10-73 "Motion Granted No Ordered...Duffy, J.
2-22-74	ANDRE SANCHEZ - Filed affdvt. & notice of motion dismissing the indictment... Ret. 3-5-74...
2-28-74	ARTURO SANCHEZ - Filed notice of motion dismissing the indictment...Ret. 3-5-74
3-1-74	ANDRE SANCHEZ - Filed affdvt. of V. Pamela Davis, AUSA in opposition to motion to dismiss.
3-4-74	ANDRE SANCHEZ - Filed reply affdvt. of Paul R. Grand
3-7-74	JOSE SALEST VALVERDI - <i>Closed statistically because</i> <i>(X) defendant</i> <i>( ) co-defendant</i> <i>( ) witness</i> <i>In all other respects this case</i> <i>is still pending.</i>
3-22-74	Filed affdvt. of V.P. Davis, AUSA in support of a writ ad test.
3-26-74	ANDRES SANCHEZ ) Atty's and interpreter present...Trial begun with a Jury ARTURO SANCHEZ ) deft JOSE SALEST VALVERDI severed from this trial.
3-27-74	Trial cont'd.
3-28-74	Trial cont'd. Jury begins deliberations.
3-29-74	Trial cont'd. Jury returns a partial verdict. Deft Andres Sanchez NOT GUILTY on count 1 ARTURO SANCHEZ not guilty on count 1 JURY deadlocked on count 2. The Court declares a Mistrial on count 2 as to Arturo Sanchez. JURY DISCHARGED. Writ satisfied....Duffy, J.
4-2-74	ANDRES SANCHEZ ) Filed memorandum and order....deft's move to dismiss the indictment ARTURO SANCHEZ ) for failure to comply with the Plan for Achieving Prompt Disposition of Criminal Cases*****the <sup>motion</sup> <del>52522</del> to dismiss the indictment be denied.....Duffy, J.
4-2-74	ANDRE SANCHEZ - Filed request to charge.
4-2-74	Filed Govt's requests to charge.
4-3-74	Filed writ of H/C Ad Test. for Ray Millan..Ret. 3-26-74.
5-15-74	A. SANCHEZ - Filed CJA appointment of So. Dist. Court Reporters.
6-14-74	<del>Filed transcript</del> of record of proceedings, dated <sup>27</sup> MARCH 26, 28, 29, 1974.
8-27-74	ARTURO SANCHEZ - Filed notice of motion to dismiss the indictment -Rule 48.
8-30-74	A. SANCHEZ - Filed memo endorsed on motion of 8-27-74..Motion Denied..Duffy, J. M/n



DATE	PROCEEDINGS
9-5-74	Filed memorandum of law (Govt's)
9-9-74	ARTURO SANCHEZ - Atty. present with deft., interpreter present. 2nd trial begun with a jury.
9-10-74	ARTURO SANCHEZ - Trial cont'd. and concluded..GUILTY on count 2 as charged. Sent.adjd until 10-21-74 10 a.m. Cont'd on bail P.S.I. ordered...Duffy,J.
10-21-74	ARTURO SANCHEZ - Filed Judgment(Atty. & interpreter,present)the deft is committed for imprisonment for a period of ONE YEAR on count two..Pursuant to the provisions of Section 841 of Ti.21, U.S.Code, deft is placed on special parole for a term of THREE YEARS, to commence upon expiration of confinement. If Immigration and Naturalization Service deports the deft before special parole term ends, it shall be unsupervised....Deft is cont'd on his present bail until Oct.31,1974 at 10 a.m. at which time he is to surrender to the U.S.Marshal, room 13, to commence service of sentence....Count 1 was previously disposed of on Marshka March 29,1974..... Duffy,J....Ent.10-30-74-----
10-31-74	ARTURO SANCHEZ - Present with counsel & interpreter..Defense counsel moves by oral motion to extend surrender date..Motion Granted. Deft to surrender to U.S. Marshal for service of sentence on Nov. 21,1974 at 10 a.m....Duffy,J.
10-31-74	ARTURO SANCHEZ - Filed notice of appeal from final judgment of 10-21-74..copy given to U.S.Atty. And Mailed to deft at 166 E.92nd St. NYC ...Leave to appeal informa pauperis is hereby granted.....Duffy,J.
11-19-74	ARTURO SANCHEZ - Filed notice that original record on appeal has been certified to U..S.C.A.
11-21-74	ARTURO SANCHEZ - Surrender adjd without date pending appeal..Bail cont'd..Duffy, J.
11-22-74	ARTURO SANCHEZ - Filed notice that supplemental record on appeal has been certified and transmitted to the U.S.C.A.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

73 CRIM. 48

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UNITED STATES OF AMERICA,

-v-

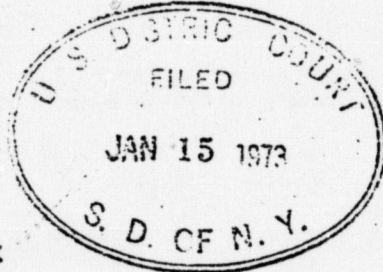
Andres SANCHEZ

Arturo SANCHEZ

Jose Salest VALVERDI a/k/a SALCITA

Defendant .

73 Cr.



The Grand Jury charges:

1. From on or about the 1st day of January, 1972 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York,

Andres SANCHEZ

Arturo SANCHEZ and

Jose Salest VALVERDE a/k/a SALCITA

the defendants and others to the Grand Jury unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

MICROFILM

JAN 18 1973





ODALE

USA-33s-538 - p.2 - IND./INF. (Conspiracy to distribute and possess with  
Ed. 5/1/71 intent to distribute narcotic drug.)

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about the 25th day of February, 1972 the defendant Andres SANCHEZ met with an undercover agent from the New York Joint Task Force and had a conversation.
2. On or about the 26th day of February, 1972 the defendant Jose Salest VALVERDE a/k/a SALCITA met with an undercover agent from the New York Joint Task Force and had a conversation.
3. On or about the 26th day of February, 1972 the defendant Arturo SANCHEZ delivered a package.

(Title 21, United States Code, Section 846)

SECOND COUNT

The Grand Jury further charges:

On or about the 26th day of February, 1972 in the Southern  
District of New York

Arturo SANCHEZ and

Jose Salest VALVERDE a/k/a SALCITA

the defendants, unlawfully, wilfully and knowingly did distribute and  
possess with intent to distribute a Schedule II narcotic drug controlled  
substance, to wit, approximately 97.45 grams of cocaine hydrochloride.

(Title 21, United States Code, Section 812,  
841(a)(1) and 841(b)(1)(A). Title 18 United States Code, Section 2)

*Copy* *S. H. H. H.*  
Foreman

*Whitney North Seymour Jr.*  
Whitney North Seymour Jr.  
United States Attorney

## United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

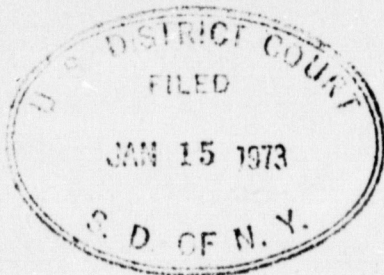
vs.

Andres SANCHEZ

Arturo SANCHEZ

Jose Salest VALVERDI a/k/a SALCITA

## INDICTMENT



United States Attorney.

A TRUE BILL

Foreman.

FPI-SS-2-19-71-20M-693

JUDGE CARTER

1-15-73 JOSE SALEST VALVERDI, B/W  
ORDERED.

J

STEWART, J.

1-17-73

DEFT. ANDRES SANCHEZ. PAUL R. GRAND, ESQ.  
ASSIGNED AS COUNSEL P.R. TO C.T.A.  
BAIL FIXED AT \$10,000. DEFT RECALLED IN  
LIEU OF BAIL. ADD TO 1-22-73 for pleadingDEFT ARTURO SANCHEZ. STUART HOLTZMAN, ESQ.  
LEG. AID. ASSIGNED AS COUNSEL P.R. TO C.T.A.  
BAIL. CONT'D. ADD TO 1-22-73 for pleading

J

STEWART, J.

Jan. 22, 1973

The defendant Arturo Sanchez  
with his atty present and, his interpreter Erny  
Trumpfy, pleads Not Guilty. Ten (10) days  
for motions. Bail reduced to \$10,000.00 <sup>PRB</sup> secured  
by 10%. Defendant to surrender his



passport to the U. S. A.

The defendant Andres Sanchez with an atty present the Court enters plea of Not Guilty. Writ satisfied. Court directs a retainer be held on defendant. 1m(10) days for motions.

The defendant Jose Salas Valverde (a bench warrant) already issued. The Court directs a plea of Not Guilty.

G

Wagner]

OCT 12 1973 - PRE-TRIAL CONFERENCE HELD BEFORE JOSE DUFFY.

Case scheduled for trial 10-15-73. Due to another trial in progress this trial will not go forward on 10-15-73.

Gov't motion for postponement due to illness of witness.

Defts' move to dismiss indictment = Decision Reserved..

MAR 21 1974 - ON ORAL MOTION BY THE DEFENSE; THE COURT  
ADJOURNS THE TRIAL OF THIS ACTION SINE-DIE.

MAR 26 1974 ANDRES SANCHEZ }  
ARTURO SANCHEZ } ATTORNEYS AND INTERPRETER (JOAQUIN R. GUM  
PRESENT. TRIAL BEGUN WITH A JURY OF TWELVE AND TWO  
ALTERNATES. DEFENDANT JOSE SALEST VALVERDI SEVERED  
FROM THIS TRIAL. DUFFY, J.

MAR 27 1974 TRIAL CONTINUED

MAR 28 1974 TRIAL CONTINUED. JURY BEGINS DELIBERATIONS AT 2:10 PM.  
JURY RETIRES AT 10 PM. ADJOURNED TO 3-29-74.

MAR 29 1974 TRIAL CONTINUED. JURY RESUMES DELIBERATIONS AT 11:10  
JURY RETURNS AT 4:50 WITH A PARTIAL VERDICT.

DEFT ANDRES SANCHEZ NOT GUILTY ON COUNT 1 AS CHARGED  
DEFT ARTURO SANCHEZ NOT GUILTY ON COUNT 1.

JURY DEADLOCKED ON COUNT 2.

THE COURT DECLARES A "MISTRIAL" ON COUNT 2 AS TO THE  
DEFT. ARTURO SANCHEZ. JURY DISCHARGED.

WRIT SATISFIED

DUFFY, J.

SEP 9 - 1974 - ARTURO SANCHEZ - ATTORNEY PRESENT WITH DEFENDANT.  
INTERPRETER JOAQUIN R. GUMA PRESENT) 2ND TRIAL BEGUN WITH A JURY,  
AS TO DEFT ARTURO SANCHEZ. DEFT + GOV'T REST.

SEP 10 1974 - TRIAL CONTINUED. SUMMATIONS BY DEFENSE +  
GOV'T - JUDGE CHARGES JURY AT 10:50 ENDS 11:15. JURY OUT 11:20  
NOTE FROM JURY (COURT EXH 1 &) AT 11:45 A.M.  
NOTE FROM JURY-VERDICT (COURT EXH 2 &) AT 2:10.  
JURY RETURNS AT 2:10 WITH A VERDICT OF GUILTY ON  
COUNT TWO AS CHARGED.  
SENTENCE ADJOURNED UNTIL 10/21/74 10AM.  
DEFT CONT'D ON BAIL.  
PRE-SENTENCE REPORT ORDERED.

DUFFY, J.

(RW)

OCT 21 1974 DEFT (ATY TOM CONCANNON PRESENT) ARTURO SANCHEZ-  
SENTENCED TO 1 YR. IMPRISONMENT. 3 YRS. SPECIAL PAROLE  
TO COMMENCE UPON EXPIRATION OF CONFINEMENT  
IF IMMIGRATION & NATURALIZATION SVCE DEPORTS DEFT BEFORE  
SPEC. PAROLE TERM ENDS, IT SHALL BE UNSUPERVISED.  
DEFT TO SURRENDER 10-31-74 10AM

Duffy, J.

(RW)

OCT 31 1974 - ARTURO SANCHEZ PRESENT WITH COUNSEL + INTERPRETER  
DEFENSE COUNSEL MOVES BY ORAL MOTION TO EXTEND SURRENDER DATE.  
"MOTION GRANTED" DEFT TO SURRENDER TO US MARSHAL FOR SERVICE  
OF SENTENCE ON NOVEMBER 21, 1974 AT 10 A.M.

NOV 21-74 - ARTURO SANCHEZ - Surrender Adjourned  
Without Date Pending Appeal Bail Court

Duffy, J.

(RW)



gtlm

## CHARGE OF THE COURT

THE COURT: Mr. Clerk, would you make the announcement.

THE CLERK: Mr. Marshal, please lock the door.

MR. CONCANNON: Would you explain to the jury why the door is locked, your Honor?

THE COURT: Yes.

Ladies and gentlemen, the charge to the jury is such that it is one of the most important parts of the case. However, we Judges have found that often in the middle of it somebody will walk in and bang the door and distract the jury from paying attention to the charge. So for that reason we have requested the marshals all the time to lock the door and to put a sign on the door saying "Silence, Judge Charging Jury." That way we avoid the interruptions which might otherwise happen.

Now that the door is locked, let me point out to you that we have now arrived at that time, the testimony is over, the arguments are over, and it is for us, for me and for you, to do our part in the administration of justice.

It is my province to instruct you as to the law and you must accept my instructions as to that. It is your function to determine the facts and your decision on that is final and conclusive.

2 In considering the evidence and determining the  
3 facts in this case, you must lay aside any questions or  
4 considerations of sympathy. It is your duty, as well as  
5 mine, to administer justice fairly and impartially. In so  
6 doing we must be guided solely by the law and the evidence,  
7 and neither you nor I can permit our conclusions to be  
8 affected by sympathy or suspicion.

9 You are to discharge your duty in an attitude of  
10 complete fairness and impartiality, and as I emphasized as  
11 you were selected as jurors, without bias or prejudice either  
12 for or against the Government or for or against this defendant.

13 This case is important to the Government since the  
14 enforcement of criminal laws is a matter of prime concern to  
15 the community. It is also important to a defendant who is  
16 charged with a serious crime. Therefore, you should treat  
17 it as a most important thing.

18 Before I turn to the indictment with which we are  
19 concerned here there are a few general observations I would  
20 like to make.

21 I instructed you at the very start of this trial  
22 that your important function during the process of taking of  
23 testimony would be to listen carefully to each witness as he  
24 testified, to observe him, and I think it has been evident  
25 that you have done so.



And so you are now prepared to undertake your final duty. In doing so you are discharging a very high duty of citizenship. You are acting as ministers of justice.

You members of the jury are the sole and exclusive judges of the fact. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such differences as there may be in the testimony and you draw whatever reasonable inferences are warranted from the facts as you determine them.

It is your recollection of the facts which governs. Should your recollection of the facts disagree with mine or with counsel's, disregard what we have to say, it is your recollection that really is the most important thing.

If you want testimony read back to you, or any part of it, I am sure that the reporter would be most happy to do so.

Of course, you must consider only the facts which are developed at this trial. You are not to be influenced by anything you have seen on television or read in the newspaper or heard on the radio, it is only what you have seen and hear here that counts.

At times during the trial I have been called upon to make rulings on various matters of law. I have sustained objections and I have overruled them. Do not concern

2 yourselves with those things. These are purely legal  
3 matters.

4 From time to time conferences at the bench, up  
5 here, were held either at the request of the attorneys or  
6 most of the time at my request. These conferences were  
7 solely about questions of law or logistics. They are not  
8 to be of concern to you.

9 If during the trial I have indicated in any way  
10 which might lead you to believe that I have an opinion as  
11 to the facts in this case, please disregard it. Any  
12 questions of mine or rulings were purely for clarification.

13 You have heard the summations of counsel. If you  
14 believe that counsel stated something as to which there is  
15 no evidence, disregard it. Statements of counsel are not  
16 evidence, they are arguments of advocates, not evidence.

17 Questions are not evidence. The evidence is the  
18 answers of the witnesses as you recall them, the testimony  
19 they gave and the exhibits which were received in evidence.

20 You heard the testimony here. How do you determine  
21 what weight you will give it? How do you determine whether  
22 you are going to believe it or not?

23 You have heard it said that you should use your  
24 common sense. That you should do. You saw the witnesses.  
25 How did their testimony impress you? Did they appear to be



testifying honestly and frankly?

In evaluating their testimony and their credibility, apply your own common sense and experience, just as you do in handling important matters in your own lives when you decide whether or not you have been given a true picture of a situation. Consider the witness' demeanor, his candor, his ability to express himself, his possible bias, his strength of recollection, his accuracy of recollection.

You may also consider whether the witness has a possible interest in the outcome of this case. This does not mean that a witness necessarily will testify falsely because he has an interest, it is merely a factor which you should consider.

Of course, the defendant has a very apparent interest in this case. But the police officers might also be said to have an interest in the case. It is a case which they investigated and presented. You may consider that and give it whatever weight you feel it deserves.

The fact that a witness is an employee of the Government does not mean that you should give greater weight or lesser weight to his testimony. His testimony is to be scrutinized in the same manner as that of any other person.

I charge you that the Government here is not to be considered in a different light than any other party to a

lawsuit and counsel for the Government is considered in no different light than counsel for the defendant or any other litigant.

You should consider whether a witness' testimony is supported and whether it is contradicted by other credible testimony. If you find that a witness has made a material misstatement with the intention of misleading you, you might disregard it or you may disregard all of the testimony of that witness if you don't believe it, or you may accept that part which you believe and find to be reliable and disregard the rest.

All of these things you are to consider in judging the credibility, believability of the witnesses in determining where the truth lies.

In considering the evidence, remember it is the quality of the evidence that counts, it is not the number of witnesses, it is not the number of exhibits.

You may hear me from time to time in this charge refer to direct and circumstantial evidence. It may be well for me to explain what circumstantial evidence is.

Direct evidence is what a witness testifies to that he saw or heard, what he knows from his own knowledge, something that came to him by virtue of his senses directly.

Circumstantial evidence is evidence of facts or



circumstances from which one may infer connected facts which reasonably follow.

Stated somewhat differently, circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts which have a logical tendency to lead your mind to the conclusion that the disputed fact is established.

Circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced of each element of the charge beyond a reasonable doubt.

Let me take an example to show you what I mean by circumstantial evidence. Let us assume when you came into the courthouse as it is today it was beautiful and sunshiny. Now let us assume all the windows are covered with the venetian blinds and drapes and you can't see out the windows and someone comes walking in here with an umbrella that is dripping wet and somebody else comes in here with a raincoat that is also wet. You can't tell from looking out the windows in my hypothetical that it is raining, but you can see these people with their wet raincoat and their wet umbrella and circumstantially you can conclude that it is raining.

And that is all that circumstantial evidence is about, you infer on the basis of reason and experience from

2 one established fact the existence of some other fact.

3 Let me touch on some more preliminary matters  
4 before we turn to the precise charge.

5 There are certain principles of law which apply in  
6 every case and to which I will make reference. I emphasized  
7 them to you, I believe, at the time you were selected as  
8 jurors. I will repeat them now.

9 An indictment is merely an accusation, it is a  
10 charge. It is not proof of a defendant's guilt. No weight  
11 whatsoever is to be given to the fact that an indictment has  
12 been returned against a defendant. He pleaded not guilty.  
13 The Government, thus, has the burden of proving the charge  
14 against him beyond a reasonable doubt.

15 The defendant does not have to prove his own  
16 innocence, he is presumed to be innocent. This presumption  
17 of innocence was in his favor at the start of the trial, it  
18 is in his favor throughout the entire trial, it is in his  
19 favor right now.

20 The law presumes that a defendant who has pleaded  
21 not guilty is innocent of the crime with which he is charged.  
22 Accordingly, the Government having made the charge, must  
23 prove guilt beyond a reasonable doubt. The burden never  
24 shifts, it remains upon the Government throughout the trial.

25 A defendant in a criminal case is not called upon



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to prove his innocence, the Government must prove beyond a reasonable doubt every essential element of the crime charged. This presumption of innocence to which I referred is removed only if and when you are satisfied that the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

A question might naturally come up in your mind, "What is a reasonable doubt?"

The words almost define themselves. It is a doubt founded upon reason and arising out of the evidence or the lack of evidence. It is a doubt which a reasonable person would have after he carefully weighs all the evidence. It is not a whim, it is not a caprice, it is not speculation, it is not conjecture, it is not suspicion, it is not sympathy, it is not an excuse to avoid the performance of an unpleasant duty.

If after a fair and impartial consideration of the evidence you can candidly and honestly say that you are not satisfied of the guilt of the defendant, that you do not have an abiding conviction of the defendant's guilt which amounts to a moral certainty, if you have such a doubt that would cause you as a prudent person to hesitate before acting in matters of importance to yourself, then you have a reasonable doubt, and in that circumstance it is your duty to acquit.

A reasonable doubt is not proof to a positive certainty or beyond all possible doubt. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible to a mathematical certainty. As a consequence, the law is that it is sufficient if the guilt of the defendant is proved beyond a reasonable doubt, not beyond all possible doubt.

Let me turn to the substantive charge.

The indictment reads as follows:

On or about the 26th day of February, 1972, in the Southern District of New York, Arturo Sanchez, the defendant, unlawfully, willfully and knowingly did distribute and possess with intent to distribute a Schedule 2 narcotic drug controlled substance, to wit, approximately 97.45 grams of cocaine hydrochloride.

The indictment thereafter lists various sections which are violated if the charge is proved. Those sections provide, in pertinent part, that it shall be unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a controlled substance.

In order to find the defendant guilty of this count you must find, one, that on or about the date alleged he distributed or possessed with intent to distribute a



controlled substance.

Two, that the defendant did so knowingly and intentionally.

And, three, that the substance which the defendant possessed was, in fact, cocaine.

I would like to say a few words about each one of these three elements, but before I do I would like to remind you that each and every one of these elements must be proved by the Government beyond a reasonable doubt.

With regard to the first element, it is not necessary for the Government to prove both acts, that the defendant had possession and distributed the cocaine, it is sufficient if the Government proves one of them.

The second element, the Government is required to establish under this intent or knowledge, that is, that if you find the defendant Arturo Sanchez either possessed or distributed a narcotic drug, you must also find that he did it knowingly and intentionally.

An act is done knowingly or intentionally if it is done voluntarily, purposely, not from mistake, inadvertence or any other innocent reason.

If you find that the defendant possessed the cocaine, you must also find that he did it with the intent to distribute it.

2 As to the third element, the indictment charges a  
3 narcotic drug controlled substance, to wit, cocaine. I  
4 instruct you as a matter of fact that cocaine is a Schedule 2  
5 narcotic drug controlled substance. However, you must find  
6 beyond a reasonable doubt that the substance was, in fact,  
7 cocaine.

8 Counsel for the Government and for the defendant  
9 have reviewed in detail the evidence and emphasized their  
10 respective contentions. I must remind you once more that  
11 their recollection of the evidence is not binding upon you,  
12 it is your recollection which governs. You are the sole  
13 judges of the facts. I can't emphasize that too much.  
14 Always it is your recollection that governs and yours alone,  
15 and you must unhesitatingly reject any statement of fact  
16 which I made which does not accord with your recollection.

17 Remember, the Government, to prevail, must prove  
18 the essential elements which I listed for you beyond a  
19 reasonable doubt. If it succeeds, your verdict should be  
20 guilty. If it fails, your verdict must be not guilty.

21 There will be 12 of you on the jury who will  
22 deliberate. The 12 of you must arrive, if you are going  
23 to find a defendant guilty, at a unanimous verdict.

24 No one should go into the deliberations in the  
25 jury room, however, with such a pride of opinion that he



or she would refuse to change it if convinced by an intelligent argument on the part of another juror. However, you should do no violence to your own well-founded opinion. You are entitled to your opinion.

Each of you must decide for himself or herself after thoroughly reviewing the evidence and exchanging views with your fellow jurors.

In conclusion, I must again remind you that this is an important case. Every criminal case is important. Handle it as an important matter. Decide solely on the evidence and the law as I have charged it to you.

(At the side bar.)

MR. CONCANNON: Nothing, your Honor.

MISS DAVIS: I object to so much of the summation by the defense as referred to prosecution and cross-examination and defense at the previous proceedings.

THE COURT: That is too late to do anything about that now.

Do you have any exceptions to my charge?

MISS DAVIS: No.

THE COURT: It was the same one I gave the last time and neither one of you had any exception.

(In open court.)

(Two marshals were duly sworn.)

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THE COURT: Mr. Huber, you are excused now. Return to Room 109.

Getting to serve as an alternate, you don't get to deliberate, but it is a most important job.

(Alternate juror excused.)

THE COURT: All right, marshals, would you escort the jury into the jury room, please.

(At 11:15 a.m., the jury retired to deliberate upon a verdict.)



2 (At 11:45 a.m., a note was received from  
3 the jury.)

4 (In open court, jury not present.)

5 THE COURT: The record should reflect we received  
6 a note which is being marked as Court's Exhibit 1 for  
7 identification.

xxx

8 (Note from jury marked Court Exhibit 1.)

9 THE COURT: The note reads, "Do all 12 jurors  
10 have to agree?"

11 Then a separate paragraph, "Would like to have  
12 replay of the defendant's reply to question when he began  
13 his employ at restaurant and/or textile firm."

14 Ask the marshal to bring back the jury.

15 (Jury present.)

16 THE COURT: Ladies and gentlemen, I received your  
17 note. There are two questions, basically, on the note.

18 The first one is, "Do all 12 jurors have to agree?"

19 The answer to that is yes. Any verdict must be  
20 unanimous.

21 The second one is, "Would like to have a replay of  
22 defendant's reply to question when he began his employ at  
23 restaurant and/or textile firm."

24 The reason that we did not reply immediately to  
25 your question is because we had to go through the record of

1 gtlm

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2 the trial to get the answers that you are interested in in  
3 that connection.

4 All right, Mr. Reporter, would you be good enough  
5 to read the testimony of Mr. Sanchez in connection with that  
6 question.

7 (A portion of the cross-examination of the  
8 defendant Sanchez was read to the jury.)

9 THE COURT: All right, ladies and gentlemen, that  
10 is the sum of the testimony concerning the second question  
11 on your note.

12 All right, Mr. Marshal, take the jury back.

13 (At 12:10 p.m., the jury retired to continue  
14 to deliberate upon a verdict.)

15 THE COURT: As I indicated before, I made arrange-  
16 ments for the jury to have lunch. I would request everybody  
17 not to go to lunch at the Attache Restaurant since that is  
18 where the jury will be.

19 (Luncheon recess.)  
20  
21  
22  
23  
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2 AFTERNOON SESSION

3 2:10 p.m.

4 (In open court, jury not present.)

5 THE COURT: We received a note from the jury  
6 indicating that they have a verdict. The note is being  
7 marked as Court's Exhibit Number 2.

xxx

8 (Note from jury marked Court Exhibit 2.)

9 THE COURT: All right, Mr. Clerk, ask the marshal  
10 to bring in the jury.

11 (Jury present.)

12 THE COURT: Ladies and gentlemen, we have a note  
13 indicating that you have a verdict.

14 As you know, there is one count in the indictment.  
15 Your verdict shall be either guilty or not guilty.

16 Call the roll of the jurors, please.

17 (Jury roll called, all present.)

18 THE COURT: Madam Forelady, have you agreed upon a  
19 verdict?

20 THE FORELADY: Yes, we have.

21 THE CLERK: How do you find the defendant Arturo  
22 Sanchez, guilty or not guilty?

23 THE FORELADY: Guilty.

24 THE COURT: Mr. Concannon, do you wish the jury  
25 polled?

UNITED STATES OF AMERICA,

-v-

ANDRE SANCHEZ,  
ARTURO SANCHEZ, and  
JOSE SALEST VALVERDI,

Defendants

S. D. OF N. Y.

AFFIDAVIT

73 Cr. 48

ONLY COPY AVAILABLE

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

V. PAMELA DAVIS, being duly sworn, deposes  
and says:

1. I am an Assistant United States Attorney  
in the office of Paul J. Curran, United States Attorney  
for the Southern District of New York and, as such,  
am familiar with the facts and circumstances of this  
action.

2. I make this affidavit in support of the  
government's application for an adjournment of the trial  
until August 27, 1973 or as soon thereafter as is  
convenient for the Court.

3. I am informed that the Government's  
principal witness has sustained severe injuries as a  
result of an accident on July 20, 1973.

4. The physician for the witness examined  
him on July 26, 1973 and reported that it will be  
at least a month before the witness would be able to  
attend and testify; the physician also reported that  
he had recommended consultation with specialists for  
further testing and diagnosis.

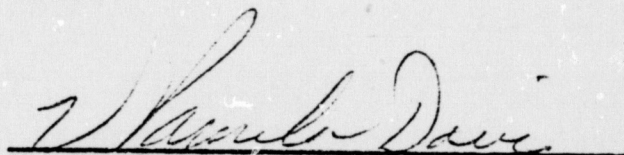


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73-0056

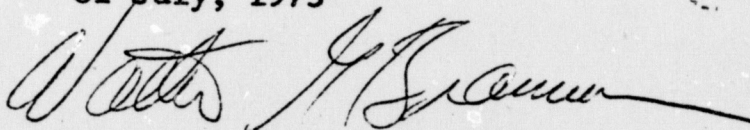
5. Of the three defendants, Andre Sanchez is presently on a Writ of Habeas Corpus and Prosequendum, Arturo Sanchez is free on bail and Jose Salest Valverdi is a fugitive. Hence, none of the defendants are incarcerated pending trial.

6. I undertake to supply the Court with more specific and updated information as I receive it.

WHEREFORE, the United States of America, respectfully requests an adjournment of the date of trial for at least a month until such time as is convenient for the Court.

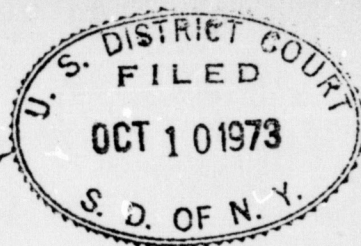
  
V. PAMELA DAVIS  
Assistant United States Attorney

Sworn to this 30 day  
of July, 1973



WALTER G. BRANNON  
Notary Public, State of New York  
No. 24-0394500  
Qualified in Kings County  
Cert. filed in New York County  
Term Expires March 30, 1975

MEMO ENDORSED



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ANDRE SANCHEZ,  
ARTURO SANCHEZ, and  
JOSE SALEST VALVERDI,

Defendants.

WITH  
AFFIDAVIT MEMO ENDORSED  
73 Cr. 48 KTD

ONLY COPY AVAILABLE

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

V. PAMELA DAVIS, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney in  
the office of Paul J. Curran, United States Attorney for the  
Southern District of New York and, as such, am familiar with  
the facts and circumstances of this action.

2. I make this affidavit in support of the  
government's application for an adjournment of the trial,  
presently scheduled for October 15, 1973, for four weeks  
or as soon thereafter as is convenient for the Court.

3. This is the government's second application  
for an adjournment based upon the continuing circumstance  
of a witness's physical inability to testify.

4. The Government's principal witness, who has  
sustained severe injuries as a result of an accident on  
July 20, 1973, remains physically incapacitated.

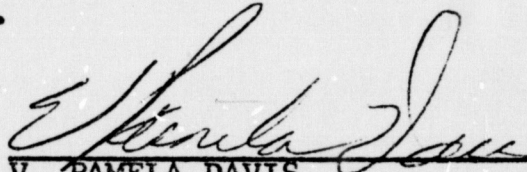
5. The physician for the witness's employer  
examined him on October 5, 1973 and reported that the  
witness will be unable to either work or appear in court  
for several weeks.



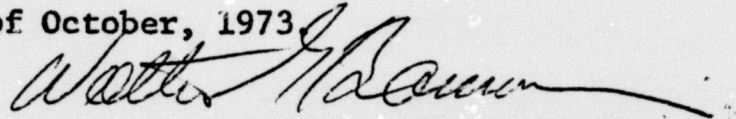
5. Of the three defendants, Andre Sanchez is presently on a Writ of Habeas Corpus ad Prosequendum, Arturo Sanchez is free on bail and Jose Salest Valverdi is a fugitive. Hence, none of the defendants are incarcerated pending trial.

6. I am willing to supply the Court in camera with statements from the physicians which are relied upon by the Government.

WHEREFORE, the United States of America, respectfully requests an adjournment of the date of trial for four weeks until such time as is convenient for the Court.

  
V. PAMELA DAVIS  
Assistant United States Attorney

Sworn to this 10 day  
of October, 1973

  
WALTER G. BRANNON  
Notary Public, State of New York  
No. 24-0394500  
Qualified in Kings County  
Cert. filed in New York County  
Term Expires March 30, 1975

TO: PAUL GRAND, ESQ.  
Poletti Freidin, et al.  
777 Third Avenue  
New York, New York 10017

THOMAS CONCANNON, ESQ.  
Legal Aid Society  
U. S. Courthouse  
Foley Square  
New York, New York 10007

notice that a  
copy, was this day  
in entitled action,  
of this Court.

19

c.,

United States Attorney  
Attorney for

Attorney for

the within  
entitlement and sig-

dge, at the office of  
United States Court-  
ough of Manhattan,  
day of  
in the noon  
ounsel can be heard.

19

c.,

United States Attorney  
Attorney for

Attorney for

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ANDRE SANCHEZ, ARTURO SANCHEZ,  
and JOSE SALEST VALVERDI,

Defendants.

AFFIDAVIT  
73 Cr. 48

PAUL J. CURRAN

TEL. 264-3666  
6333

United States Attorney  
Attorney for U.S.A.

Due service of a copy of the within is hereby  
admitted.

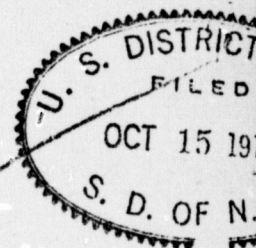
New York, 19

Attorney for

To

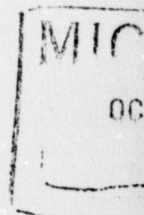
Attorney for

FPI-MI-2-2-73-50H-8754



*Notion granted  
So ordered  
K. Thompson  
VSDJ*

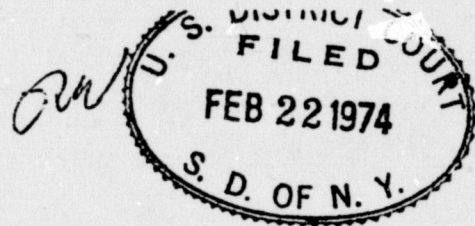
*Oct 15 1973  
New York, N.Y.*





ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- x  
: UNITED STATES OF AMERICA :  
: - against - :  
: ANDRE SANCHEZ, :  
: ARTURO SANCHEZ and :  
: JOSE SALEST VALVERDI. :  
: ----- x

73 CR 48  
(KTD)

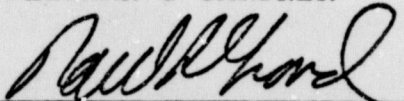
NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Paul R. Grand, sworn to February 21, 1974, Messrs. Poletti Freidin Prashker Feldman & Gartner will move this Court, before the Honorable Kevin T. Duffy, in Room 110 of the United States Court House, Foley Square, New York, New York, on Tuesday, March 5, 1974, at 2 15 P.M., or as soon thereafter as counsel can be heard, for an Order, pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure and the "Plan For Achieving Prompt Disposition of Criminal Cases" promulgated thereunder, dismissing the indictment as to defendant Andre Sanchez.

Dated: New York, New York  
February 22, 1974

POLETTI FREIDIN PRASHKER  
FELDMAN & GARTNER

By 

A Member of the Firm  
Attorneys for Defendant,  
Andre Sanchez  
Office and P.O. Address:  
777 Third Avenue  
New York, New York 10017  
Tel. No.: 212-688-3200

TO:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x  
UNITED STATES OF AMERICA :

73 CR 48  
(KTD)

- against - :

ANDRE SANCHEZ,  
ARTURO SANCHEZ and  
JOSE SALEST VALVERDI. :

AFFIDAVIT

- - - - - x  
STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

PAUL R. GRAND, being duly sworn, deposes and says:

1. I am a member of the firm Poletti Freidin Prashker Feldman & Gartner and am counsel to the defendant Andre Sanchez, having been appointed pursuant to the Criminal Justice Act on January 17, 1973.

2. This affidavit is submitted in support of defendant Andre Sanchez' second motion to dismiss the indictment herein for noncompliance with the "Plan For Achieving Prompt Disposition of Criminal Cases" ("Plan") promulgated pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure.

3. The indictment herein was filed more than thirteen months ago on January 15, 1973.

4. On May 14, 1973, the Government filed a Notice of Readiness for Trial and the Court fixed August 1, 1973 as the date of trial.

5. On July 30, 1973, Assistant United States Attorney V. Pamela Davis, filed an affidavit in support of an application



by the Government for an adjournment, stating that the Government's principal witness had sustained severe injuries as the result of an accident on July 20, 1973 and was unavailable to testify. The Court granted the Government's application and fixed a new trial date in late August 1973. Trial was thereafter adjourned to October 15, 1973.

6. On October 10, 1973, again on the application of Assistant United States Attorney V. Pamela Davis, the Government sought an additional trial postponement to an unspecified date on the ground of the continuing unavailability of the Government's principal witness. That application was opposed by Andre Sanchez on the ground that the Plan authorized trial postponement because of the unavailability of material evidence only where "there are reasonable grounds to believe that such evidence will become available within a reasonable period" (see, Plan, Rule 5(c)(i)) and the Government was unable to provide the Court with any assurance that its witness would be available "within a reasonable period". In connection with his opposition, Andre Sanchez cross moved to dismiss the indictment against him.

7. The Government's application and Andre Sanchez' cross motion came on for hearing before the Honorable Kevin T. Duffy on October 12, 1973.

8. Judge Duffy reserved decision on both the Government's application and Sanchez' cross motion to dismiss the indictment. This may have been in part due to the fact that the trial of Perma Research & Development Co. v. The Singer Co., 66 Civ. 665 (KTD) ("Perma"), in which Andre Sanchez' counsel is counsel to plaintiff, was then scheduled to commence within a matter of days. However, to date, there has been no decision,

even though the Plan calls for such motions to be "decided with utmost promptness" (see, Plan at §4).

9. The trial of Perma commenced on November 5, 1973, continued through December 14, 1973 when it was adjourned to January 4, 1974 and was adjourned on January 8, 1974, sine die, until the completion of United States v. Carmine Tramunti, et al., 73 Cr. 1099.

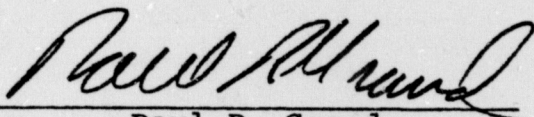
10. At the request of both parties thereto, commencement of the Perma trial was adjourned to early November 1973. Accordingly, I was available to try the Sanchez case from October 12 to November 5, 1973. Thereafter, I was available to try Sanchez from December 14, 1973 to January 4, 1974 and from January 8, 1974 to the present. Although I was actually engaged in the Perma trial during the periods indicated in the preceding paragraph, the parties thereto waived trial by jury on November 15, 1973 and that trial could readily have been adjourned at any time thereafter for the one to two days necessary to try Sanchez.

11. Yesterday I was advised by Assistant United States Attorney V. Pamela Davis, that the Government's principal witness continues to be unavailable to testify in Sanchez as a result of head injuries he sustained last July, and that the Government will oppose this motion on that ground. In view of this fact and the fact that it is now almost thirteen months since the indictment herein and almost seven months since the Government first sought adjournment of the trial because of the condition of its principal witness, it is unlikely that the Government will be able to give this Court any assurance as to when, if ever, the witness will be able to testify.

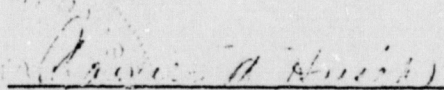


12. Andre Sanchez is presently serving a six-year sentence which was imposed in an unrelated case in August 1972. His incarceration commenced in March 1972 with his arrest, and he is now eligible for parole in connection with that sentence. However, parole cannot be granted in view of the pendency of the unresolved indictment herein.

13. Rule 5(c)(i) contained in the Plan permits adjournments only insofar as "there are reasonable grounds to believe that such evidence will become available within a reasonable period". I respectfully submit that the delay which has already taken place requires immediate dismissal of this indictment. If the Court does not accept this view, I submit that any further delay, because of the health of the Government's witness, or for any other reason, is not permissible under the Plan and, accordingly, an immediate trial must be held herein, failing which the indictment must be dismissed. This conclusion is particularly compelling in view of the fact that continued delay of the trial herein effectively prevents Mr. Sanchez from receiving the parole for which he is now eligible.

  
Paul R. Grand

Sworn to before me this  
22nd day of February, 1974.

  
Notary Public

CANDICE M. HVISCH  
Notary Public, State of New York  
No. 31-7023600  
Qualified in New York County  
Commission Expires March 30, 1976

-v-

: AFFIDAVIT IN OPPOSITION

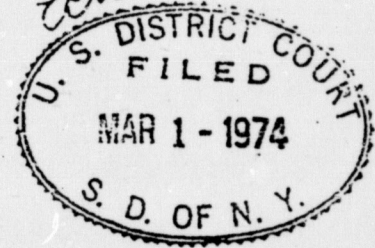
ANDRE SANCHEZ,  
ARTURO SANCHEZ and  
JOSE SALEST VALVERDI,

: 73 Cr. 48 (KTD)

Defendants.

:

-----x  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : SS.:  
SOUTHERN DISTRICT OF NEW YORK )



V. PAMELA DAVIS, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney in  
the office of Paul J. Curran, United States Attorney for  
the Southern District of New York and, as such, am in  
charge of the prosecution of the above-captioned case.

2. I make this affidavit in opposition to  
defendant Andre Sanchez' motion to dismiss the indictment  
herein.

3. Defendant Sanchez' motion to dismiss is  
premised upon alleged noncompliance with the "Plan For  
Achieving Prompt Disposition of Criminal Cases" (hereinafter  
"the Plan") promulgated pursuant to Rule 50(b) of the  
Federal Rules of Criminal Procedure.

4. Rule 5(c)(i) of the Plan requires that:

In computing the time within which the  
government should be ready for trial under  
Rules 3 and 4, the following period should  
be excluded:

\* \* \*

(c) the period of time during which:

(i) evidence material to the government's  
case is unavailable, when the prosecu-  
ting attorney has exercised due



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73-0056

diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period. . .

5. Defendant Sanchez' motion alleges that the government can no longer represent that the evidence, a witness, will "become available within a reasonable period."

6. On or about January 22, 1974 Judge Duffy's clerk inquired as to whether the government was prepared to go to trial the next day before Judge Bauman.

7. I replied that the government was indeed ready for trial; the witness was available and the government was prepared to proceed.

8. The physical incapacity of the government's witness is now only intermittent. Defendant Sanchez cannot argue that the witness will not "become available" when, in fact, the witness was available for trial on January 23, 1974.

9. The ~~number of~~ government's previous application for an adjournment was based not only on Rule 5(c)(i) but also on Rules 5(c)(ii) and 5(h) of the Plan.

10. As Rule 5(c)(i), unlike Rules 5(c)(ii) and 5(h), refers specifically to "evidence", the tolling of the six month rule for the illness of a witness would more appropriately come under Rule 5(c)(ii) or 5(h).

11. Neither Rule 5(c)(ii) nor 5(h) requires any assurance that evidence not now available will become available.

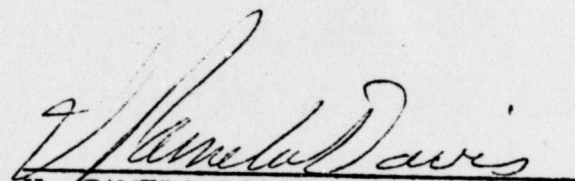
12. Defendant Sanchez' sole ground for seeking dismissal of the indictment as to him, the alleged inability




of the government to assure the Court that evidence will become available, obviously fails since the government was prepared for trial on January 23, 1974.

13. There are, in addition, two other grounds for the adjournment of trial date which do not contain the qualification on which defendant Sanchez relies..

14. As the motion to dismiss has no basis in fact it must be denied.

  
V. PAMELA DAVIS  
Assistant United States Attorney

Sworn to before me this  
28<sup>th</sup> day of February, 1974.

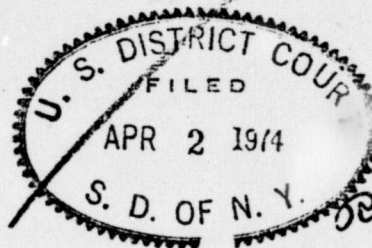
  
EDWIN A. HAYES  
Notary Public, State of New York  
No. 41-172625  
Qualified in Queens County  
Cert. Recd in New York County  
Commission Expires March 30, 1975

TO: PAUL GRAND, ESQ.  
Poletti, Freidin, Prashker  
Feldman & Gartner  
777 Third Ave.  
New York, New York 10017

THOMAS CONCANNON, ESQ.  
Federal Defender Services Unit  
United States Courthouse  
Foley Square  
New York, New York 10007

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



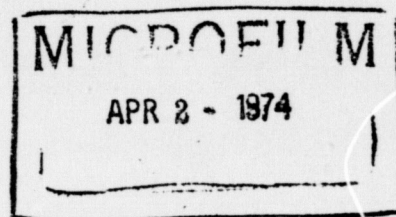
-----x  
UNITED STATES OF AMERICA

-against-

ANDRE SANCHEZ,  
ARTURO SANCHEZ and  
JOSE SALEST VALVERDI,

Defendants.  
-----x

:  
: MEMORANDUM AND ORDER  
: 73 Cr. 48



KEVIN THOMAS DUFFY, D.J.

Defendants Andre Sanchez and Arturo Sanchez have moved to dismiss the indictment for failure to comply with the "Plan for Achieving Prompt Disposition of Criminal Cases" (hereinafter the "Plan") promulgated pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure.

The indictment was filed on January 15, 1973, charging the defendants with conspiracy to distribute narcotics. On May 14, 1973, the government filed a Notice of Readiness for Trial and the Court fixed August 1, 1973 as the date of trial. On July 30, 1973, the Assistant United States Attorney applied for an adjournment on the ground that the government's principal witness, Patrolman Charles Martinez, had sustained severe injuries as the result of an accident on July 20, 1973, and was unavailable to testify. The application was granted



and a new trial date set for late August 1973. Later, the trial was rescheduled for October 15, 1973.

On October 10, 1973, The Assistant United States Attorney again applied for a postponement due to the unavailability of Patrolman Martinez. The defendant Andre Sanchez opposed the application, on the ground that there was no assurance of the witness becoming available within a reasonable period as prescribed in Rule 5(c)(i) of the Plan, and also cross moved to dismiss the indictment. Both motions were heard on October 12, 1973, but the formal decision denying them was unfortunately never docketed.

Because of the Court's involvement in two previously scheduled and unexpectedly lengthy trials, in one of which the attorney for Andre Sanchez represented the plaintiff, the case was not called to trial again until March 21, 1974. However, on January 22, 1974, in response to an inquiry from the Court, the Assistant United States Attorney said that the government was prepared to go to trial the following day before Judge Bauman. In late February 1974, both defendants again moved to dismiss the indictment for failure to comply with the Plan, and a hearing was held on this motion on March 22, 1974.\*

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\* The trial did not start on March 21, 1974, as scheduled, because the defense attorneys requested a short adjournment to allow them to interview a potential witness whose existence they learned of only on the eve of trial.

The defendants advance alternative arguments in support of the motion to dismiss. On the one hand they argue that there is no reasonable likelihood that the government's principal witness will become available to testify. This argument the government answers by stating that Patrolman Martinez is presently available to testify and that the government is ready to go to trial. The defendants then claim that if Patrolman Martinez is presently available, he has also been available during the past six to eight months and that the earlier adjournments were therefore not justified. It was to this question that the hearing was addressed.

The only person who testified at the hearing was Patrolman Martinez himself. He stated that following his accident on July 20, 1973, he was placed on sick leave until August 7, 1973, when he returned to work. He said that he was assigned to light duty until September 13, when he had another accident, causing him to be absent from work until December 3, 1973. During this period and continuing to the present time, his main symptoms were intermittent nausea and vertigo, but he was nonetheless able to drive a car. He said that the nausea would precede the vertigo and that if he happened to be driving, he would pull over to the side when he felt the nausea and wait 10 or 15 minutes until the vertigo passed. He was not aware that the trial of this case



had been adjourned on his account, and he had not been called at home by the Assistant United States Attorney in either August or October to discuss his availability for trial. However, the Assistant United States Attorney represented at the hearing that both times before requesting a postponement she had called Patrolman Martinez' office, had been told he was on sick leave, and had discussed his symptoms with the Police Surgeon. In addition to his testimony, Patrolman Martinez' medical records were introduced, showing that the July 20 accident had caused temporary blackness of vision in his left eye in addition to the dizziness and that the accident of September 13 had caused a cerebral concussion. An eye examination of November 9, 1973 indicated that there was no longer a problem with his vision.

These facts do not justify dismissing the indictment. Both times the government requested an adjournment Patrolman Martinez was too ill to be at work and hence too ill to testify. The fact that he could drive a car does not alter this conclusion, nor does the fact that the Assistant United States Attorney did not telephone him at home. Both the government and the defendants are entitled to the testimony of witness who is not likely to be seized by blackness of vision or dizzy spells on the witness stand.

In these circumstances, dismissal of the indictment is not required by the Plan for Achieving Prompt Disposition of Criminal Cases. The Plan necessarily allows the government a certain amount of flexibility in making its witnesses available for trial. United States v. Rollins, 475 F.2d 1108 (2d Cir. 1973); United States v. Cacciatore, 487 F.2d 240 (2d Cir. 1973); United States v. Cuomo, 479 F.2d 688 (2d Cir. 1973). Here the government's Notice of Readiness was filed within four months of the indictment, and the original scheduling of the trial on a date two and a half months later was necessary to accommodate the crowded calendar of a newly appointed judge with a large caseload. Similarly, the period between December 3, 1973 and March 21, 1974, was taken up by two previously scheduled trials. Under the circumstances, the four month period of adjournment from August to December 1973, caused by Patrolman Martinez' illness, was a "reasonable period" within the meaning of Rule 5(c)(i).

The defendants argue that the government should have notified the Court when Patrolman Martinez became available on December 3. While this undoubtedly would be preferable as a general practice, it would not have resulted in an earlier trial for these defendants and therefore the government's failure to do so does not require dismissal of the indictment.



The final argument of defendant Andre Sanchez is that he has been prejudiced by this delay because he is currently serving a six year sentence which was imposed in August 1972, in an unrelated case. He argues that had he been convicted and sentenced in this case in August 1973, his sentence could run concurrently with the one he is presently serving. Further, he claims additional prejudice because he is now eligible for parole but it cannot be granted in view of the unresolved indictment herein.

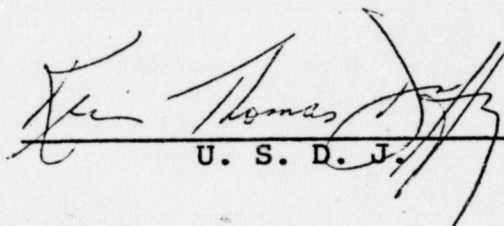
Prejudice to the defendant is a key factor to be considered in deciding whether an indictment should be dismissed because of pretrial delay. Barker v. Wingo, 407 U.S. 514 (1971). Here, however, the prejudice to the defendant is actually minimal. If he is convicted on the present indictment, I will take into consideration the time lost in pretrial delay. Strunk v. United States, 41 U.S.L.W. 4794 (U.S. June 11, 1973). With regard to his eligibility for parole, while the delay of a month or so between the time he became eligible for parole and the time the case was called to trial is unfortunate, it does not necessarily require dismissal of the indictment.

The question whether in a particular case the interests of fairness mandate dismissal of an indictment because

of pretrial delay requires a balancing of the interests of the government against the interests of the defendant.

Barker v. Wingo, supra. Factors to be considered include the length of delay, the reason for the delay, and the defendant's assertion of his rights, as well as prejudice to the defendant. Id. Here the defendant Andre Sanchez was diligent and persistent in asserting his rights, but since the delay was reasonable and the prejudice to the defendant minimal, justice requires that the motion to dismiss the indictment be denied.

SO ORDERED.

  
U. S. D. J.

Dated: New York, New York

March 25, 1974.



## SICK REPORT

FD 429-122 (REV. 9-71)  
(FORMERLY M.E. 1)AR  
CODE

ONLY COPY AVAILABLE

TELEPHONE NO.

NEXT SCHEDULED TOUR  
TOUR DATESERIAL  
NO.MED.  
DISC

RANK | SURNAME | FIRST NAME | INITIAL | SHIELD NO. | TAX REGISTRY NO. | COMMAND | TEMP. ASSIGNMENT

PC-1 | Martinez | Charles | | 27403 | | NYITF |

RESIDENCE (Outside NYC include TOWN) | APT. OR FLOOR | Between What Streets or Aves. | RES. PCT. OR COUNTY

| | | 107

REPORTED SICK | DAY OF WEEK | HOUR | MONTH (Spell) | DAY | YEAR | INJURED IN LINE OF DUTY? | ☐ YES ☐ NO | OLD INJURY? ☐ YES ☐ NO | DATE | COMPLAINT PENDING? ☐ YES ☐ NO

183 | 7 | 20 | 73 | ☐ YES ☐ NO | ☐ YES ☐ NO

DURING SICK REPORT  
MEMBER WILL BE AT:☐ RESIDENCE  
☐ OTHER (Explain)DATE DISCHARGED  
FROM HOSPITALMEMBER WILL  
☐ VISIT ☐ CALL  
POLICE SURGEON

COURT OR OTHER APPEARANCES SCHEDULED?

☐ YES☐ NO

Court or Agency

Date

Time

Principals

DOES MEMBER  
REQUEST VISIT  
BY CHAIRMAN?☐ YES ☐ NO

REMARKS/ILLNESS

Head - back injury. LOD  
7-nap. St Vincent  
Hosp

TELEPHONE (S)  
CHECKS.  
AND/OR VISITS (V)

DISTRICT SURGEON

DIST.

PCT.

RANK/SIGNATURE OF RECEIVING MEMBER

DR.

MEMBER'S COMMAND  
NOTIFIED BY:☐ TELETYPE☐ TELEPHONE

RANK/NAME OF SUPERIOR NOTIFIED

TO BE FILLED IN BY SURGEON

HISTORY AND FINDINGS:

Head case  
back pain

Firearms Removed ☐ Yes ☐ No

Date:

By Surgeon:

District:

HISTORY OF TREATMENT

VISITS		LOCATION Office, Residence, Other: Explain	DIAGNOSIS OR CONDITION	TREATMENT
DATE	TIME			
7/1/73	8:30		TO call home to see Dr. Chon	
8/1			back still hurt with kindergart	
			Paul seen	

DISPOSITION

ORDERED TO REPORT FOR:

FULL DUTY ☐LIMITED DUTY ☐SUSPENSION ☐

OR

RETIRED ☐RESIGNED ☐DIED ☐DISMISSED ☐

HOUR

DAY

MONTH

YEAR

6:30

7

8

73

MEDICAL UNIT NOTIFIED

TIME

DATE

RECEIVED BY:

SURGEON'S FINAL DIAGNOSIS

8/6/73

V. Lee

SURGEON'S SIGNATURE

## HISTORY OF TREATMENT (Continued)

[illegible]

## HOSPITALIZATION

NAME AND ADDRESS OF HOSPITAL	DATE ADMITTED
FINAL DIAGNOSIS	DATE DISCHARGED
SUMMARY (Course, Operation, Significant Laboratory Data, Etc.)	

**SUMMARY (Course, Operation, Significant Laboratory Data, Etc.)**



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U. P. 43



POLICE DEPARTMENT

CITY OF NEW YORK

NEW YORK, N. Y. 10013

DUTY  
SUBMIT BILL

July 26, 1973

Re: P.O. Charles  
Martinez  
shield# 27403  
command: NYJTF

Dear Doctor Keil,

The above captioned Police Officer fell and bruised his head and back. Since that time he has had blurred vision.

Would appreciate an ophthalmological consultation.

I.H. Parnes, M.D.  
15th Medical Dist.

July 26, 1973  
date

From: Dr. Parnes District Surgeon

To: Chief Surgeon

Subject: REQUEST FOR OPTHALMOLOGICAL CONSULTATION.

Request that P.O. Charles Martinez 27463 NYJTF  
rank name shield command

479-8854 be referred to an Honorary Surgeon  
home telephone

1. CHIEF COMPLAINT: Blurred vision.
2. PAST HISTORY: Patient fell on 7/20/73 and bruised his head.
3. PRESENT ILLNESS: Blurred vision
4. DIAGNOSIS: Blurred vision.
5. Have x-rays been ordered for orthopedic case?

Remarks:

6. PREVIOUS CONSULTATIONS: None

7. LOD XX NLOD

On sick report - yes no

8. ALL CAPTIONS ARE TO BE TYPED

7-31-73 +  
1400.

KEIL

Noted  
7-27-73  
7/30/73

Surgeon

Med Dist



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Entry 1146

NYC POLICE DEPARTMENT  
MEDICAL UNIT

HONORARY POLICE SURGEONS REPORT

DUPLICATE MAILED TO DISTRICT SURGEON

Parnes

AUG 6 1973

ON

P.O. Charles Martinez

Sh # 27463

NYJTF

Rank Name

Shield

Command

REFERRED TO DR. Keil

DATE 7-27-73

Date of Appt. 7-31-73 1400 Hours

DIAGNOSIS

No pathology found other than old corneal scar left eye.

TREATMENT  
OR  
OPERATION

No treatment recommended.  
8/1/73 Ophthalmological examination.

RECOMMENDATIONS

PROGNOSIS

Dr. Keil's fee ..... \$20.00

8/2/73 rh

Michael  
Signature

UNITED STATES DISTRICT COURT

JUDGE DUFFY

Jury demand date:  
ONLY COPY AVAILABLE

JUDGE RAY LEE

**TITLE OF CASE**

**ATTORNEYS**

VS

For plaintiff:

-Matson;-Kass-&-Goodkind Maltese-

-69-East-42-St.,-NYC--      Anastasi

Poletti, Freidin, Feldman, 10005

Prashker, Gartner (5-7-62)

777. Third Ave. NYC 10017

(11-21-69)

For defendant:

Winthrop Stimson Putnam & Roberts

40 Wall St. NYC 10005

## COSTS

DATE \_\_\_\_\_

NAME OR  
RECEIPT NO.

REC.

Clerk

29-66	Winter Ke G
-------	-------------

57.

Marshal

7-29-65	NETZGE.
9-6-68	USTREAS

5-

Docket fee

breach of contract

Witness fees	
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Declaratory Judgmt.

## Depositions



JUDGE DUFFY PAGE #2

~~JUDGE MC LEAN~~ Page 3

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date of Judgment
Aug.29-68	Filed notice of appeal by plttf. Mailed copy to Winthrop, Stimson, Putnam & Robert 140 Wall Street, N.Y.	
Sept.17-68	Filed Undertaking costs on appeal in the sum of \$250- U.S. Fidelity & Guaranty Co.	
Sept.24-68	Filed deposition of deft. Singer Co. by Hermann H. Sharp taken on 7-19-66. m/n	
Sept.24-68	Filed deposition of deft. Singer Co. by Robert A. Kloby taken on 7-12-66.	
Sept.24-68	Filed deposition of deft. Singer Co. by Robert E. Romel taken on 7-14-66.	
Sept.24-68	Filed deposition of deft. Singer Co. by Robert A. Kloby taken on 7-13-66. (Continued)	
Sept.24-68	Filed deposition of Deft. Singer Co. by Robert A. Kloby taken on 7-14-66. (Continued)	
Sept.24-68	Filed deposition of deft. Singer Co. by Albert E. Romel taken on 7-18-66. (Continued)	
Sept.24-68	Filed deposition of deft. Singer Co. by Albert E. Romel taken on 7-19-66. (continued)	
Sept.24-68	Filed deposition of deft. Singer Co. by Robert R. Patten taken on 10-4-66.	
Sept.24-68	Filed deposition of deft. Singer Co. by Cecil Morris taken on 11-29-66.	
Sept.24-68	Filed deposition of deft. Singer Co. by Burton C. Person taken on 11-30-66.	
Oct.3-68	Filed notice record on appeal has been certified and transmitted to the U.S.C.A.	
Jun.26-69	Filed true copy from the U.S.C. of appeals - Ordered that the orders of district Court be & hereby are affirmed with costs to be taxed against the appellant. Clerk. Judg. Ent. Clerk. mailed notice ent. 6-30-69	
Jul.3-69	U.S.C.A. costs in favor of appellee in the sum of \$667.00 & docketed as Judgment #70,122. Judg. Ent. Clerk. Ent. 7-8-69 m/n	
Sep.5-69	Filed deft's notice of motion for summary judgment ret. 9-16-69.	
Sep.5-69	Filed deft's statement rule 9(g).	
Sep.5-69	Filed deft's memorandum in support of his motion for summary judgment.	
Sep.19-69	Filed plttf's affidavit & show cause order to substitute attorneys ret. 9-23-69. Rm. 506.	
Sep.19-69	Filed plttf's memorandum of law in support of his motion. (Show cause order.)	
Sep.18-69	Filed notice pursuant to rule 4(C) Louis Cantolupo, Daniel Bostick & Theo Larmond, are appointed to serve all process in above action. Clerk.	
Sep.26-69	Filed plttf's application for enlargement of time beyond 9-30-69 to answer motion to dismiss complaint.	
Sep.26-69	Filed memo-Endorsed on plttf's application filed this date: Plttf's application is granted to the following extent: Time of plttf. Perma to serve answering papers will be extended to 10-21-69. The deft's motion to dismiss will be adjourned to 10-28-69. So ordered. Bryan, J. m/n	
Sep.29-69	Filed affidavit of Worth Rowley Re: counsel fees by Perma.	
Oct.27-69	Filed stip to adj. deft's motion ret. 10-28-69 to 12-2-69.	
Dec 2-69	Filed stip to adj. deft's motion for summary judgment ret. 12-2-69 to 12-16-69	
Jan 5-70	Filed plttf's statement pursuant to Rule 9(g) of the General Rules of this Court.	
Jan 5-70	Filed affidavit of Frank Perrino, President of plttf in opposition to defts' motion for summary judgment.	
Jan 5-70	Filed memorandum in opposition of deft's motion for summary judgment.	
Jan 6-70	Filed Reply memorandum in support of summary judgment by deft. (filed in court)	
Jan 6-70	Filed plttf's memorandum in response to deft's reply memorandum. (filed in court)	
Jan 27-70	Filed deft's reply to plttf's memorandum in response to deft's post-oral argument memorandum.	
Jan 27-70	Filed plttf's memorandum in response to deft's post-oral argument memorandum.	
Jan 27-70	Filed memorandum by defts' in reply to plttf's response to deft's original reply memorandum.	
Jan 27-70	Filed affdvt of James J Leonard, atty for deft re: svc by mail.	
Jan 27-70	Filed OPINION #36525 ---MacMahon, J. -"***** Accordingly, the motion for summary judgment is denied ----- So Ordered" MacMahon, J. m/n	
Apr 23-70	Filed Deft's Notice of motion for summary judgment ---Ret: 4-28-70.	
Apr 23-70	Filed Deft's statement required by local court rule 9(g).	
Apr 23-70	Filed Deft's memorandum in support of motion for summary judgment.	
Apr.27-70	Filed stip to adj. deft's motion from 4-28-70 to 5-5-70.	

continued next page



JUDGE DUFFY

JUDGE MC LEAN

DATE	PROCEEDINGS	Date of Judgment
Mar. 9-66	Filed complaint and issued summons.	
Mar. 30-66	Filed stip. & order extending deft's time to answer to 4-20-66-Cannella, J.	
Apr. 13-66	Filed summons & return, served deft. 3-11-66	
Apr. 20-66	Filed ANSWER of deft. and counterclaim	WSP2
May 10-66	Filed plttf's REPLY to counterclaim	
Jun 3-66	Filed deft's notice of examination.	
June 15-66	Filed plttf's notice to take deposition of deft. by Robert Kolby, Hal Sharp, Al Roman and Cecil Morris.	
Sep. 8-66	Filed plttf's notice to take deposition	
Feb. 24-67	Filed deft's affdvt & notice of motion for summary Judgment ret. 3-7-67	
Feb. 24-67	Filed deft's memorandum in support of its motion	
March 6-67	Filed stip adjourning deft' motion to 3-28-67	
Mar. 20-67	Filed plttf's affdvt & notice of motion for summary judgment ret. 3-28-67	
Mar. 20-67	Filed memorandum in support of motion for summary judgment(plt's)	
Mar. 20-67	Filed plttf's affdvt & notice of motion to strike affdvt ret. -28-67	
Mar. 20-67	Filed plttf's memorandum of law in support of its motion	
Mar. 20-67	Filed plttf's affdvt & notice of motion for leave to file amended reply ret. 3-28-67	
Mar. 29-67	Filed memo endorsed on motion filed 3-20-67-motion denied following argument- so ordered-Bryan, J. mailed notice	
Mar.29-68	(Filed in Court) - Memorandum in Support of Plttf's Motion to file amended reply out of time	
Mar.29-68	(filed in Court) - Defs. Reply Memorandum in support of motion for summary judgment and in opposition to plttf's Cross Motion for Summary Judgment	
Apr.1-68	Filed Opinion #34610 - Singer's motion for summary judgment on its counterclaim will be denied. Settle order on notice embodying the decisions reached in this opinion. - Bryan, J. m/n	
Apr.15-68	Filed Memorandum in Support of Singer's Motion for Reargument	
Apr.15-68	Filed Deft. Notice of Motion for reargument ret. 4-23-68	
Apr.19-68	Filed Pltffs. Notice to Take Deposition upon oral examination. Supboena issued	
Apr.22-68	Filed Pltffs. Memorandum in support of its motion for reargument as to all the issues considered by the Court on the Cross-motions for summary judgment	
Apr.22-68	Filed Pltffs. Notice of Motion for reargument ret. 4-30-68	
Apr.22-68	Filed Pltffs. Stip. that the motion of the deft. for reargument is adj. from the 23rd day of April 1968 to the 30th of April 1968.	
Apr.23-68	Filed Pltffs. Notice to Take Depositions upon oral examination	
Apr.26-68	Filed Defs. Memorandum in Opposition to Plttf's motion for reargument as to all the issues considered by the Court on the Cross motions for summary judgment ret. 4-30-68	
May 3-68	Filed Deft. Stipulation adj. date of taking deposition to a date - 30 days after a decision by Bryan, J. on the motions for reargument of Judge Bryan's decision dated April 1, 1968 of the parties' cross-motions for summary judgment.	
May 14-68	Filed Consent Order that the firm of Maltese, Titone and Anastasi be substituted in place of Matson, Kass, Goodkind as attys. for Perma Research & Develo. Co.	
July 12-68	Filed memo-endorsed on motion of 4-22-68: Both plaintiff's and defendant's motions for reargument are granted. On reargument my original decision dated, March 29, 1968 is adhered to. It is so ordered. Bryan, J. m/n	
Aug 13-68	Filed Notice of Settlement ret. 7-29-68 10 A.M. and Order and entry of judgment Ordered that the Court expressly determining under Rule 54 b of the FRCP that there is no just reason for delay, hereby expressly directs that a final judgment be entered: 1-dismissing with prejudice the First Count of the com- plaint and 2- dismissing with prejudice the second count of the complaint in- sofar as said count seeks rescission of the December 21, 1964 agreement between Perma and Singer, and said judgment is hereby entered. Judgment entered 8-13-68 m/n - Clerk etc. as indicated. Bryan, J.	
Aug.16-68	Filed notice of entry of order & Judgment.	

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JUDGE DUFFY

JUDGE MC LEAN

JUDGE DUFFY

DATE	PROCEEDINGS	Date of Judgment
Nov 2- 70	Filed Pltff's Notice to take deposition of Alfred di Scipio on Nov. 19 1970	
Dec 3- 70	Filed Pltffs' affdvt, exhibits & application for an order authorizing plttf to depose the Singer Co., deft. herein by Mr. Albert Romel and Robert Kloby.	
Dec 15- 70	Filed Affdvt of William Chanler, atty for deft, re: re-examination of employees.	
Jan 6 71	Filed Pltff's affdvt of Paul R Grand in reply to deft's affdvt. & in support of plttf's application to depose The Singer Co. by Albert Romel & Robt. Kloby.	
Jan 6- 71	Filed Order that plttf shall file a note of issue within 90 days or action to be dismissed -- Sugarman, Ch J. (mailed notice)	
Jan 6-	Filed Memo Endorsed on application filed Dec 3-70, "Motion withdrawn in light of 90 day order entered this date. So Ordered: Sugarman Ch J.	
Feb 3 71	Filed Stipulation & Order that the transcript of testimony of Shirley James Murphy, taken by plttf on Nov. 23-24 1970 shall be signed but need not be signed and sworn to in the presence of a notary public. So Ordered - Bryan, J.	
Feb 10 71	Filed Stipulation & Order that the time within which the transcript of testimony of John Pecko, taken by plttf shall be signed & sworn to, is hereby ext. to 4-1-71. So Ordered --- Wyatt, J/	
Apr 2 71	Filed Stip & Order the time within which the transcript of the testimony of Shirley James Murphy, taken by plttf on 11-23, 24-70 is to be signed is hereby ext. to Apr. 30 1971 So Ordered - Cooper J.	
Apr 5 71	Filed Pltff's NOTE OF ISSUE & statement of readiness.	
Apr 29 71	Filed Order pursuant to calendar rules 6 & 13.....Sugarman Ch J.	
May 5, 71	Filed Deft's designation of trial counsel.	
May 6 71	Filed Pltff's designation of trial counsel.	
May 24-71	Filed deft's application to extend time for plttf & deft to file pre trial memorandum & exchange list of exhibits etc.	
May 24-71	Filed memo endorsed on application filed this date---Application granted extending time to file pre trial memorandum to 7-30-71-So ordered-McLean, J. m/n	
Jul 29-71	Filed stip & order that time for parties to meet for purpose of exchanging exhibit lists & witnesses is ext. from 7-30-71 to 9-30-71-So ordered-Lasker, J	
OCT 1 71	Filed Pltff's List of proposed trial witnesses in its direct case.	
OCT 1 71	Filed Pltff's List of proposed trial exhibits for its direct case.	
NOV 12 71	Filed Supplemental designation of plttf's proposed trial exhibits.	
APR 4 72	Filed Consent Pre-Trial Order. ---- McLean J.	
May 18 72	Filed Stipulation that deft serve & file on 5-23-72 the memo discussed at pre-trial conference before McLean J. on 4-14-72. Plttf will serve its answering memo on 6-21-72. Deft will serve its reply memo on 6-28-72.	
JUL 20 72	Filed Second Supplemental pre-trial memorandum submitted by Plttf.	
Jul 28-72	Filed Record of Transcript dated July 5-1972.	
Nov.17,72	Filed Transcript of Record of Proceedings dated 7/5/72, 10:00 A.M.	
Jul 27-73	Filed deft's supplemental designation of deft's proposed trial exhibits.	
Sep28-73	Filed deft's supplemental pre-trial order. So ordered DUFFY, J.	
Oct.2-73	Filed deft's notice of designation of trial counsel.	
Oct.5-73	Filed plttf's affdvt. and notice of motion for an order directing a separate trial for the issue of damages. Ret. 10-12-73.	
Oct. 5-73	Filed plttf's memorandum of law in support of bifurcation of trial.	
Oct 5-73	Filed defts supplemental designation of witness.	
Oct. 9-73	Filed plttf's supplemental designation of witness.	
Oct. 11-73	Filed deft's affdvt. in opposition to motion for bifurcation of trial.	
Oct. 11-73	Filed deft's memorandum in opposition to bifurcation of trial.	
Oct. 19-73	Filed memo endorsed on motion filed 10-5-73. The motion for bifurcation of trial is denied. So ordered- DUFFY, J. mailed notice.	
Oct. 23-73	Filed deft's supplemental designation of proposed trial exhibits.	
Oct. 25-73	Filed deft's tentative requests to charge.	

(CONT'D ON OTHER SIDE-- PAGE # 5)



(PAGE # 5)

*Long*

DATE	PROCEEDINGS	Date Order Judgment N
Oct. 20-73	Filed def't's supplemental designation of proposed trial exhibits.	
Oct. 30-73	Filed designation of depositions for use on pl'tff's direct case.	
Nov. 1-73	Filed pl'tff's proposed requests to charge.	
Nov. 5-73	Filed def't's supplemental Voir Dire questions.	
Nov. 2-73	Filed pl'tff's suggestions for Voir Dire of prospective jurors.	
Nov. 5-73	Filed pl'tff's supplemental designation of proposed trial exhibits. (paper # 1)	
Nov. 5-73	Filed pl'tff's supplemental designation of proposed trial exhibits. (paper # 2)	
Nov 26 73	Filed in court Def't's suppl. designation of proposed trial exhibits.	
Nov 26 73	Filed in court Def't's memo in support of the admission of evidence relating to the intent of the parties when they entered the December contract.	
Nov. 30-73	Filed def't's memorandum in support of the admission of evidence relating to the intent of the parties when they entered the December contract.	
Nov. 5-73	Before DUFFY, J. Jury trial begun & cont'd. Adjourned to 11-7-73.	
Nov. 7-73	Trial cont'd	
Nov. 8-73	Trial cont'd	
Nov. 9-73	Trial cont'd and adjourned to 11-12-73	
Nov. 12-73	Trial cont'd	
Nov. 13-73	Trial cont'd	
Nov. 14-73	Trial cont'd	
Nov. 15-73	Trial cont'd. Both sides stipulate to continue trial without a Jury. Jury discharged. Trial adjourned to 11-19-73	
Nov. 19-73	Trial cont'd.	
Nov. 20-73	Trial cont'd.	
Nov. 21-73	Trial cont'd. Adjourned to 11-26-73	
Nov. 26-73	Trial cont'd	
Nov. 27-73	Trial cont'd	
Nov 28-73	Trial cont'd.	
Nov. 29-73	Trial cont'd.	
Nov. 30-73	Trial cont'd. Adjourned to 12-3-73.	
Dec. 4-73	Filed in Court 11-26-73. Def't's supplemental designation of proposed exhibits.	
Dec. 4-73	Filed in Court 11-26-73. Memorandum in support of the admission of evidence relating to the intent of the parties when they entered the December contract.	
Dec 7-73	Filed supplemental designation of def'ts proposed trial exhibits.	
Dec. 4-73	Trial cont'd	
Dec. 5-73	Trial cont'd	
Dec. 6-73	Trial cont'd	
Dec. 7-73	Trial cont'd.--adj. to 12-12-73	
Dec. 12-73	Trial cont'd-adj. to 12-14-73	
Dec. 14-73	Trial cont's- adj. to 1-4-74	
Jan. 4-74	Trial cont'd- adj. to 1-8-74	
Jan. 8-74	Trial cont'd.- adj. Sine Die	
Jan. 15-74	Filed transcript of record of proceedings of 11-5, 7, 8, 9, 12, 13, 14-73	
Jan. 15-74	Filed transcript of record of proceedings of 11-29, 30, 12-3, 4, 5, 6, 7-73	
Jan. 15-74	Filed transcript of record of proceedings of 11-15, 19, 20, 21, 26, 27, 28-73	
Jan. 15-74	Filed transcript of record of proceedings of 12-12, 13-73	
Apr. 12-74	Filed def't's amended designation and counterdesignation of depositions in support of def't's case.	
Apr. 12-74	Filed def't's proposed objections to pl'tff's designations.	
Apr. 12-74	Filed def't's memorandum in support of def't's counterdesignations.	

(CONT'D - PAGE #6)



DATE	PROCEEDINGS
Apr. 1-74	trial cont'd from 1-8-74
Apr. 2-74	trial cont'd
Apr. 3-74	trial cont'd
Apr. 4-74	trial cont'd- adjourned to 4-15-74
Apr. 15-74	trial cont'd- adjourned to 4-17-74
Apr. 17-74	trial cont'd
Apr. 18-74	trial cont'd
Apr. 23-74	trial cont'd
Apr. 24-74	trial cont'd
Apr. 25-74	trial cont'd- adjourned to 5-1-74
May 1-74	trial cont'd - 5/2, 5/3, 5/6, 5/7, 5/8, 5/9, 5/13, 5/14, 5/15, 5/16, 5/17, 5/20
May 23-74	trial cont'd- 5/24- 5/28, 5/29, 5/30, 5/31 and adjourned to 6/1/74
June 3-74	trial cont'd- 6/4-6-5, 6/6, 6/10, 6/11, 6/12, 6/13, 6/14, 6/17, 6/18, 6/24, 6/25
June 26-74	trial cont'd-6/27
June 28-74	trial cont'd and concluded. (total-70 days). Proposed findings of fact and conclusions of law, briefs to be submitted 9-30-74.
July 23-74	Filed transcript of record of proceedings dated 6-4-5-6-10-11-12-74
July 23-74	Filed transcript of record of proceedings dated 6-13-14-17-18-24-74
July 23-74	Filed transcript of record of proceedings dated 5-6-7-8-9-13-14-15-16-17-74
July 23-74	Filed transcript of record of proceedings dated 4-17-18-23-24-25-74-5-1, 2, 3-74
July 23-74	Filed transcript of record of proceedings dated 6-25, 26, 27, 28-74
July 23-74	Filed transcript of record of proceedings dated 5-20, 23, 24, 28, 29, 30, 31-74 and 6-3-74
July 23-74	Filed transcript of record of proceedings dated 1-4, 8-74 and 4-1, 2, 3, 4, 15-74
Nov. 20-73	(Filed in Court-) Corrections of deft's designations of depositions.
Nov. 20-73	(filed in Court)- Designation and counter designation of depositions in support of deft's case (corrected)
May 2-74	(filed in Court)- memorandum in support of deft's motion to dismiss at the close of plttf's direct case.
Sept 30 74	Filed Deft's post-trial brief ex.
Sept 30 74	Filed Deft's proposed conclusions of law.
Sept 30 74	Filed Deft's proposed findings of fact.
Oct. 1-74	Filed affdvt. of service by an individual on 9-30-74 served deft's post trial brief, etc.
Oct. 25-74	Filed Errata to deft's post trial brief, proposed findings of Fact and conclusions of law.

ONLY COPY AVAILABLE  
JUDGE DUFFY

73 CRIM. 1099

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Walter M. Phillips, AUSA
	264-6345
( See back for defendants)	
	For Defendant:
	M.J.SALVANI - R.Alan Stotsenburg
	Esq. 260 Riverside Dr. NYC

ABSTRACT OF COSTS (07)	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		4/23/74	Ellen	5 -	
Clerk,		4/24/74	Thelen		5 -
Marshal,		5/4/74	Allen	200 -	
Attorney,		5/10/74	Thelen		200 -
Commissioner's Court,		5/9/74	Siegel	5 -	
Witnesses,		5/10/74	Thelen		5 -
of		5/10/74	Allen	5 -	
		5/10/74	Lopez	5 -	
		5/14/74	Thelen		10 -
		5/17/74	Palouse	5 -	
		4/21/74	Thelen		5 -

DATE	PROCEEDINGS
	21:173,4,846 (Consp. to viol. Fed. Narcotic Laws.(Ct.1)
	21:848 (Engaging in continuing crim. enterprise.(Ct2)
	21:173,4(Received, Concealed and facilitated transp. of narcotic(Cts3-14)
	21:841(a)(1),(b) Distr. & possess. w/intent to distr.Heroin & Cocaine I & II
	(Cts. 15-30) 9/21/74 Thelen 25000 - 9/21/74 Thelen 25000 - (Paul Foxpertuary)
2-6-73	Filed indictment. (Superseding 73Cr931)



# 2

2 Cr 1099

Duffy, J.

Duffy, J.

73Cr1099

DATE	PROCEEDINGS
1	CARMINE TRAMUNTI- Cts. 1&27 J.S. 3✓
2	LOUIS INGLESE- <del>1, 11, 12, 13, 14, 23, 24 &amp; 27</del> J.S. 3✓ - 6, 8, 11, 12, 13, 14, 23, 24, 27, 28 (ct. 2)
3	JOSEPH DELVECCHIO-1, 3, 4, 11, 12, 13, 23, 24 & 27 J.S. 3✓
4	DONATO CHRISTIANO-1, 11-13 + 12 J.S. 3✓
5	THOMAS LENTINI-1, 23, 24, 28 & 29 J.S. 3✓
6	ANGELO MANONE-1 J.S. 3✓
7	JOSEPH DINAPOLI-1 & 21 J.S. 3✓
8	CARMINE PUPLIESE- 1 & 22
9	PAT DILACIO-25x 1, 15, 18, 20, 21 & 22
10	FRANK PUGLIESE-1, 16, 18 & 20 J.S. 3✓
11	JOSEPH CERIALE-1, 23, 24 & 27 J.S. 3✓
12	JOHN GAMBA-1 J.S. 3✓
13	ANTHONY LORIA-1
14	VINCENT D'AMICO-1 & 25 J.S. 3✓
15	DOMINICK LESSA-1, 9, 10 & 29
16	BENJAMIN TOLOPKA- 1&7
17	GEORGE TOUTOIAN-1 & 25
18	FRANK PELLEGRINO-1
19	JOSEPH MARCHESE-1 & 17 J.S. 3✓
20	RICHARD FORBRICK-1
21	FRANK RUSSO-1, 16 & 26 J.S. 3✓
22	WARREN C. ROBINSON-1 J.S. 3✓ ct. 26 open
23	THOMAS DAWSON-1
24	AL GREENE-1
25	WILLIAM ALONZO-1 J.S. 3✓
26	HATTIE WARE-1 J.S. 3✓
27	JOHN SPRINGER-1 & 19 J.S. 3✓
28	MARY JANE SALVIANI-1
29	HENRY SALLEY-1 J.S. 3✓
30	BASIL HANSEN -1 & 30
31	ESTELLE HANSEN-1 & 30
32	JOHN DOE, a/k/a Jimmy Wyatt Earp-1

DATE	PROCEEDINGS
2-7-73	THOMAS LENTINI - Pre-trial conference..Produced in Court on Writ. Appears in Court with atty..writ.adjd to 12-11-73. BENJAMIN TOLOPKA - Atty.present. The court direct entry of NOT GUILTY PLEA. ESTELLE HANSEN - No appearance. Court directs a telegram be sent to her last known address and if there is no compliance then a bench warrant may be ordered. The Court directs entry of PLEA OF NOT GUILTY as to ALL DEFT/S.
12-10-73	WARREN C. ROBINSON - Bench warrant ordered - DUFFY, J.
12-10-73	WARREN C. ROBINSON - Bench warrant issued.
12-12-73	FRANK PELLEGRINO - Appears in court. The Court assigns Irwin Rochman as counsel THOMAS LENTINI - The court assigns firm of Lenefsky,Gallina,Mass,Berne H and Hoffman as counsel ESTELLE HANSEN - Bench warrant ordered. Duffy,J.
12-14-73	Filed Bill of particulars.
12-14-73	JOHN SPRINGER - Produced in Court on writ. No atty.present. The Court directs the deft report to U.S.Magistrate for assignment of counsel. Writ adjd to 12-19-73. Duffy, J.....
12-19-73	JOHN SPRINGER - Atty.present..Counsel moves for bail reduction..present bail is \$10,000. Bail reduced to \$5,000. Deft remanded in lieu of new bail fixed in sum of \$5,000. writ adjd until Jan.11-74..Duffy, J.
12-26-73	F.PELLEGRINO - Filed CJA appointment of counsel Irving Rochman 230 Park Ave. NYC
12-26-73	E. AL GREEN - Filed CJA appointment of counsel Harold Schwartz 16 Court St. Brooklyn, N.Y.
12-28-73	C. TRAMUNTI Et.Al. - Filed Govt's supplemental bill of particulars.
1-3-74	JOHN SPRINGER - Filed affirmation & notice of motion for an Order controverting any and all search and arrest warrants, supressing evidence...Ret.1-7-74
1-3-74	Filed order that Dr.H.L.Jaffe be employed to examin deft.FRANK PELLEGRINO to determine whether deft is able to stand trial on or about 1-14-74..CARTER, J.
1-3-74	Filed order that Dr.R.A.Shimm be employed to examine deft RICHARD FORBRICK to determine whether deft is able to stand trial on or about 1-14-74..DUFFY, J.
Jan.4-74	B.TOLOPKA - Filed memo endorsed on letter dtd.12-27-73 from Murray Richman,Esq. Deft's motion for a severance is denied. The request for a further bill of particulars is denied*****Duffy,J. Mailed notice
Jan.4-74	J.SPRINGER - Filed memo endorsed on letter dtd.12-28-73 from M.J.Siegel. The deft's motion for a bill of particulars denoting the exact time,date and place of alleged transaction is denied*****Duffy,J....Mailed notice
	(SEE OVER)



DATE	PROCEEDINGS
1-7-74	PRE-TRIAL conference held before Judge Duffy. Trial to commence 1-14-74 as to all defts EXCEPT...CARMINE PUGLIESE, PAT DILACIO, WARREN ROBINSON, BASIL HANSEN, ESTELLE HANSEN, JOHN DOE, a/k/a JIMMY W. EARP, G. TOUTOIAN and A. LORIA, Each of which are SEVERED. COUNT 26 as to FRANK RUSSO severed. On oral request by Govt. R. Forbrick severed.....Duffy, J.
1-8-74	THOMAS LENTINI - Produced in court on writ, atty. present. Deft WITHDRAWS plea of not guilty & PLEADS GUILTY. Previous P.S.I. report to be referred to. JOSEPH DELVECCHIO (Produced in Court on writ, atty. present....PLEADING adjd until 1-9-74 at 2p.m. Writ adjd until 1-9-74.....Duffy, J.
1-9-74	W. ALONZO - Filed affdvt. of T.M. Fortuin, AUSA in support of a writ. *****
1-8-74	V. PAPA - Filed affdvt. of W.M. Phillips, Jr. AUSA in support of a writ.
1-8-74	J. DINAPOLI - Filed affdvt. of W.M. Phillips, Jr. AUSA in support of a writ.
1-9-74	J. DINAPOLI - Produced on writ, atty. present. Motion to suppress adjd to 1-10-74 J. DELVECCHIO - Produced on writ, atty. present. Disposition adjd until Jan. 11-74 Writ adjd to Jan. 11-74.....Duffy, J.
1-9-74	JOHN GAMBA - Filed memo endorsed on 12-21-73 letter dated 12-21-73 for a further bill of particulars****The Govt. indicated that it would voluntarily give deft's certain particulars****The deft requests name of persons whom heroin was delivered***This request is granted.....Duffy, J. Mailed notice.
1-9-74	MARE JANE SALVANI - Filed order that motion to dismiss count 1 is denied. Duffy, J.
1-9-74	W. ALONZO - Filed order that motion to dismiss count 1 is denied.... Duffy, J.
1-9-74	A. MAMONE - Filed order that motion to dismiss count 1 is denied...Duffy, J.
1-9-74	M.J. SALVANI - Filed motion confirming appointment, appointing a psychiatrist to to examine deft, to suppress & for sever her case....MEMO ENDORSED requests 1 and 2 are granted, request 4 is denied, request 3 will be disposed at later date.....Duffy, J. Mailed notice
1-9-74	C. TRAMUNTI - Filed notice of motion to suppress...With MEMO ENDORSED...Motion was disposed of at the pre-trial conference****Duffy, J.
1-10-74	F. PELLEGRINO ) L. INGLESE ) Filed order ....Motion to furnish statements by co-conspirators prior to trial is denied.....Duffy, J.
1-10-74	F. PELLEGRINO - Filed order***The motion to order govt. to supply statements with respect to offers of leniency****is denied. These items will be turned over on night prior to time the govt. expects to call such witnesses...Duffy, J.
1-11-74	Filed Govt's exhibit 9a ordered sealed and placed in vault room 602
1-11-74	L. INGLESE - Filed affdvt. of W.M. Phillips, Jr. AUSA in support of a writ.

- Cont'd. on page 5.



DATE	PROCEEDINGS
1-11-74	A.MAMONE - Filed order**motion to sever is denied. Duffy, J.
1-11-74	H.SALLEY - Filed order. The govt.is directed to supplement its bill of particulars with respect to covert act 14....Duffy,J.
1-11-74	Filed order As to Loria,Pellegrino,Alonzo and Salvani, The govt is required to set forth particulars ***Duffy,J.
1-11-74	FRANK PELLEGRINO - with consent of Govt. deft is severed from trial. T.DAWSON - Atty.present..WITHDRAWS plea of not guilty and PLEADS GUILTY to count 1..P.S.I. ordered sentence adjd without date.Bail cont'd.\$25,000 P.R.B. DUFFY, J....
1-11-74	J.DELVECCHIO -Produced on writ, atty.present. WITHDRAWS plea of not guilty and PLEADS GUILTY to cts.1,11,12,13,23,24 & 27 only. PREVIOUS P.S.Report to be referred to. Sent. sine die....Duffy, J. MARY J. SALVIANI - No appearance (atty.present) Bench warrant ordered. WARREN C. ROBINSON - Bench warrant vacated & deft ordered fingerprinted & photographed...Court directs not guilty plea be entered. Bail cont'd. \$2500 P.R.B. in Washington.
1-15-74	Filed Govt's memorandum of law.
1-10-74	Filed in Court letter dtd 1-7-74 from U.S.Atty. with report of Dr.Harry L.Jaffe attached...
1-15-74	DOMINICK LESSA - No appearance...Bench warrant ordered.....Duffy, J.
1-15-74	J.GAMBA - Filed endorsement****this is a motion for a further bill of particulars made 'at my request in informal letter form****THE deft also requests the name or names of the persons to whom the heroin was delivered***This request is granted.....Duff,J. m/n
1-15-74	AL GREEN - Filed notice of appearance by Harold Schwartz 16 Court St. Bklyn,N.Y.
1-16-74	Filed order,the defts move to dismiss the indictment in this matter,delay the trial or change venue. I do not believe that the news stories alluded to were so widespread***the motion is in all respects denied.....Duffy, J....
1-16-74	Filed memo endorsed on J.Del Vecchio motion filed 12-4-73***The request not ruled upon heretofore are denied.....Duffy,J. m/n
1-17-74	Filed order A motion was made for continuance because certain 3500 material was made prior to trial.****The motion for a continuance is denied... Duffy, J.
1-17-74	Filed order A motion was made to suppress govt's evidence in this case on the basis of taint***The motion is denied without prejudice to renewal after the verdict.....Duffy,J.
1-17-74	Filed Order & Opinion #40239: A motion was made by the deft John Springer to suppress certain narcotics and other paraphernalia seized when he was arrested on Dec 3, 1973, as indicated. The motion for suppression is denied in all respects. The deft can object to the offer of this evidence at the trial on the grounds of relevancy. A ruling will be made as to that objection at the trial at the trial after I have had an opportunity to determine its relevancy. So Ordered, Duffy, J.



DATE	PROCEEDINGS	ONLY COPY AVAILABLE
Jan 17-74	<p>Filed Opinion # 40240: On the evening of Feb 3, 1972 agents of the Joint Task Force were sent out to execute certain arrests. Both arrests were to be made in connection with the sale and distribution of narcotics. When said agents placed Vincent Papa a conspirator and deft morant Joseph Di Napoli under arrest they found a suitcase containing nearly one million dollars in a green Pontiac they were riding in, owned by a rental car by a WIDE-WORLD-LEASES CORPORATION. It is this money which the deft. Di Napoli to suppress. The fact that the officers proved erroneous in their judgment that the obtained narcotics does not invalidate the arrest if their initial belief was reasonable. If the Officer acts with probable cause he is protected even though it turns out that citizen is innocent. Applying this standard the facts and circumstances on which the officers relied must be considered in their totality not as isolated events. Applying standards I find tha Agent allatroni had probable cause to stop and arrest Vince and Joseph Di Napoli on the night in question and had probable cause to search the automobile for contraband. That search reasonably included opening the suspect suitcase. The motion to suppress the evidence in question is therefore denied. So Ordered. Du</p>	
Jan 18-74	<p>Filed Affidavit &amp; Notice of Motion by Frank A. Lopez, (atty for deft. DiNapoli) for an order suppressing the introduction into evidence in these proceedings of all the statements obtained and seized from the deft etc. as indicated rtble before Duffy, on Jan 7th, 1974.</p>	
Jan. 18-73	<p>Filed Govt's reply memorandum of law to deft Inglese's motion to dismiss ct.2....</p>	
<del>Jan. 21-74</del>	<del>Filed notice of</del>	
Jan. 21-74	<p>Frank Pugliese - Filed notice by U.S.ATTY. pursuant to 21 U.S.C. 849</p>	
Jan. 21-74	<p>CARMINE TRAMUNTI - Filed notice by U.S.ATTY. pursuant to 21 U.S.C. 849</p>	
Jan. 21-74	<p>JOSEPH DINAPOLI - Filed notice by U.S.ATTY. pursuant to 21 U.S.C. 849</p>	
Jan. 25-74	<p>L.INGLESE-Filed affdvt. &amp; notice of motion for disclosure.</p>	
Jan. 21-74	<p>C. TRAMUNTI - L.INGLESE - D. CHRISTIANO - A. MANONE - J. DINAPOLI - F. PUGLIESE - J. CERIALE - J. CAMBA - V. D'AMICO - B. TOLOPKA - J. MARCHESE - F. RUSSO - W. ROBINSON - A. GREENE - W. ALONZO - H. WARE - J. SPRINGER - H. SALLEY - JURY TRIAL BEGUN M.J. SALVIANI - Severed from trial. Bench warrant vacated. D. LESSA - Severed from trial - No appearance Govt. Moves for bail forfeiture (GRANTED \$25,000 cash or surety bond)</p>	
Jan. 22-74	<p>TRIAL CONT'D.</p>	
Jan. 23-74	<p>TRIAL CONT'D.</p>	
JAN. 24-74	<p>TRIAL CONT'D.</p>	
JAN. 25-74	<p>TRIAL CONT'D. Deft's motion to sever count 30 from this trial granted.... Duffy, J. Filed Govt's exhibit 3503A ordered sealed and placed in vault, Room 602</p>	
1-24-74	<p>Filed transcript of record of proceedings, dated 1-11-74</p>	
1-24-74	<p>Filed transcript of record of proceedings, dated 1-14-74</p>	
1-25-74	<p>Filed order of sequestration of the jurors and the alternate jurors in this case.</p>	
1-30-74	<p>C. TRAMUNTI - Filed affdvt. &amp; notice of motion to transfer the trial to another District Judge in S.D.N.Y. *****MEMO ENTERED the motion was disposed of in open Court..... on 1-21-74.... Duffy, J.</p>	
1-30-74	<p>J. SPRINGER - Filed request for voir dire</p>	

DATE	PROCEEDINGS
1-30-74	C.TRAMUNTI - Filed proposed examination of prospective jurors
1-30-74	JOHN GAMBA - Filed memorandum on behalf of deft as to relevance of money seized from deft DiNapoli.
1-30-74	J.DINAPOLI - Filed trial memorandum.
1-30-74	J.SPRINGER - Filed supplemental affirmation of M.J.Siegel, Esq.
1-30-74	Filed Govt's trial memorandum
1-30-74	R.FORBRICK - Filed envelope ordered sealed and placed in vault, room 602...Duffy, J.
2-1-74	Filed Courts exhibit # 24 ordered sealed and placed in vault Room 602...Duffy, J.
2-1-74	Filed Court exhibits 25 thru 47 (Tape cassetts & reel to reel tapes....Duffy, J.
2-4-74	Filed affdvt. in support of writ for H.H.Hamilton
1-29-74	Filed CJA appointment of Southern Dist. Court reporters
1-29-74	Filed CJA appointment of counsel Robert P. Leighton 15 Park Row NYC
2-4-74	Mailed original CJA appointment of Southern Dist. Court reporters
1-22-74	V.PAPA - Filed writ with mar. l's return writ satisfied...Metzner.
1-28-74	TRIAL CONT'D.
1-30-74	TRIAL CONT'D.
1-31-74	TRIAL CONT'D.
2-1-74	TRIAL CONT'D.
2-4-74	TRIAL CONT'D.
2-5-74	TRIAL CONT'D.
2-6-74	TRIAL CONT'D. Hearing begun on motion to suppress evidence on behalf of DEFT HATTIE WARE...Hearing concluded..Decision Reserved.
2-8-74	HENRY SALLEY - Filed CJA appointment of Harry Pollak 299 B'Way NYC...Duffy, J.
2-8-74	Filed Court exh. #56 Notes of Richard Miller (6 pages) ordered sealed & placed in vault, Room 602.....Duffy, J.
2-11-74	Filed order that three copies of the local papers be purchased for use by the Jurors*****Duffy, J.
2-11-74	Filed Court exhibit #59 (Reporting officers reports) ordered sealed and placed in vault....Duffy, J.
2-11-74	Filed Court exhibit #61 (G.J. of the special narcotics Courts-city of N.Y.) ordered sealed and placed in vault.....Duffy, J.
**	
2-8-74	H.H.HAMILTON - Filed writ with marshal's return//Writ satisfied...Lasker, J.
2-13-74	Filed Govt's memorandum of law.... By T.M.Fortuin, AUSA.
***	
2-4-74	J.SPRINGER - Mailed Original CJA copy 1 to A.O. for payment of So. Dist. Court reports



DATE	PROCEEDINGS
2-7-74	TRIAL CONT'D.
2-8-74	TRIAL CONT'D.
2-11-74	TRIAL CONT'D.
2-12-74	TRIAL CONT'D.
2-13-74	TRIAL CONT'D.
2-14-74	TRIAL CONT'D. Counsel for deft Al Greene moves for a continuance - DENIED - the Court orders that deft AL GREENE be severed from this trial.
2-14-74	H.WARE - Filed memorandum an order***Motion to suppress denied.
2-15-74	TRIAL CONT'D.
2-16-74	TRIAL CONT'D.
2-18-74	TRIAL CONT'D. Filed Govt's exhibits 3570A 3571A 3572A 3573A 3574 ordered sealed and placed in vault room 602.....Duffy, J.
2-19-74	TRIAL CONT'D.
2-19-74	Filed order, deft FRANK RUSSO motion to vacate an order entered on Jan.7-74, severing from the trial of this case count 26***The deft's motion is denied..Duffy, J.
2-19-74	Filed court exhibit 67id (Govt.exh.3575A ordered sealed and placed in vault rm.602 *** Duffy, J....
2-14-74	Filed order that atty's have agreed to share cost of transcription on an aliquot basis***the share of such costs be paid by U.S. as a disbursement pursuant to 18 U.S.C. 3006(a)(e)....Duffy, J.
2-20-74	Filed CJA authorization of So. Dist. Court Reporters.
2-22-74	Filed Govt's exhibits 3580, 3581, 3582 ordered sealed and placed in vault....Duffy, J.
2-20-74	TRIAL CONT'D.
2-21-74	TRIAL CONT'D.
2-22-74	TRIAL CONT'D.
2-23-74	TRIAL CONT'D. Adj'd until 2-25-74
2-25-74	TRIAL CONT'D.
2-26-74	TRIAL CONT'D. COUNT 27 is dismissed as to all deft's on trial, on motion of defts counsel, no objection by the Govt.
2-27-74	TRIAL CONT'D.
2-28-74	TRIAL CONT'D.
3-1-74	TRIAL CONT'D. Deft's rest. Both sides rest.
3-4-74	TRIAL CONT'D. The Court orderd a directed verdict of ACQUITTAL as to J. MARCHESE deft's bail exonerated.... Summations begun by defense.

- cont'd on page 9-

DATE	PROCEEDINGS
3-11-74	<del>Filed in</del> JOSEPH MARCHESE - Filed in Court on Jan. 21-74 2nd offender information.
3-11-74	DOMINICK LESSA - Filed in Court on Jan. 21-74 2nd offender information
3-11-74	JOHN GAMBA - Filed in Court on Jan. 21-74 2nd offender information.
3-11-74	DONATO CHRISTIANO - Filed in Court on Jan. 21-74 2nd offender information.
3-5-74	Trial cont'd. summations cont'd by defense.
3-6-74	Trial cont'd. " " " "
3-7-74	Trial cont'd. Summations cont'd & concluded by the defense. Summations begun by the Govt.
3-8-74	Trial cont'd. Judge charges Jury....JURY BEGINS deliberations at 9:30. Jury retires at 10 p.m.
3-9-74	Trial cont'd. Jury continues deliberations at 10 a.m. Jury retires at 7 p.m.
3-10-74	Trial cont'd. Jury resumes deliberations. Jury retires at 10:40.
3-11-74	Trial cont'd....Jury resumes deliberation. Jury retires at 10 p.m.
3-12-74	Trial cont'd Jury resumes deliberations
3-13-74	Trial cont'd. Jury returns with a partial verdict at 3:50 p.m. CARMINE TRAMUNTI - GUILTY ON COUNT 1. LOUIS INGLESE - GUILTY ON COUNTS 1,3,4,5,6,8,11,12,13,14,23,24 & 28. DONATO CHRISTIANO - GUILTY ON COUNTS 1,11,12 & 13. ANGELO MAMONE - GUILTY ON COUNT 1. JOSEPH DINAPOLI - GUILTY ON COUNTS 1 & 21 FRANK PUGLIESE GUILTY 1,16,18 & 20. JOSEPH CERIALE GUILTY 1,23 & 24. JOHN GAMBA GUILTY on COUNT 1. VINCENT D'AMICO GUILTY on COUNTS 1 & 25.  FRANK RUSSO GUILTY ON COUNTS 1 & 16. WARREN C.ROBINSON GUILTY on COUNT 1. WILLIAM ALONZO GUILTY on COUNT 1. HATTIE WARE GUILTY on COUNT 1. JOHN SPRINGER GUILTY on COUNTS 1 & 19. HENRY SALLEY GUILTY on COUNT 1. PRE-SENTENCE reports order. Sentence adj'd until April 22, 1974 at 10 a.m. The following deft's have now had their bail revoked and are REMANDED. D.Christiano....F.Pugliese,....W.Robinson....J.Springer....H.Salley and J.GAMBA. The following defts who were previously in custody are remanded until sentencing C. TRAMUNTI...L.INGLESE, J. DINAPOLI...V. D'AMICO....W. ALONZO. The following deft's are cont'd on present bail...A.MAMONE (\$10,000) J.CERIALE (\$10,000) F. RUSSO H.WARE \$5,000 PRB cash. B.TOLOPKA'S motion for mistrial made orally -Govt.opposes..The Court declares a mistrial....LOUIS INGLESE-Counsel moves for severance as to count 2..Govt. opposes. The Court severs count#2 as to Inglese.....Duffy, J.
	(Cont'd. on page 10)



DATE	PROCEEDINGS
4-1-74	ANGELO MAMONE - Filed affdvt. & notice of motion for judgment of acquittal. or a new trial-----Ret. 4-5-74.
4-1-74	ANGELO MAMONE - Filed memorandum in support of above motions.
4-2-74	C. Tramunti - Filed Affidavit & Notice of Motion for an order directing the acquittal of the deft. Carmine Tramunti, etc. as indicated, rtble before Duffy, J. on 4-5-74.
4-2-74	FRANK RUSSO - Filed affdvt. & notice of motion for the acquittal of the deft. ret.4-5-74
4-2-74	WILLIAM ALONZO - Filed order....I hereby give my permission for William Alonzo to marry*****Duffy, J.
4-2-74	JOHN GAMBA - Filed order *** H.Leonard King, Esq. is relieved of his assignment and Robert B.Fiske, Jr. is substituted for all respects....Duffy, J.
4-2-74	Filed memorandum (Govt's) in support of its offer to introduce rebuttal testimony.
4-2-74	Henry Salley Filed affdvt. of Harry R. Pollak, ESQ. Dtd. 3-27-74...With memo endorsed. This affdvt. and its supporting papers have been considered as a motion****That Motion is denied.....Duffy, J.
Apr. 23-74	WILLIAM ALONZO - Filed order***The U.S. Marshals transport the deft from his place of incarceration to the U.S. COURTHOUSE***to accomplish his prompt appearance for sentencing.....DUFFY, J.
Apr 25-74	Filed transcript dated. Feb 19-20-21-22, 1974.
Apr 25-74	Filed transcript. dated March 1, 4, 5, 6, 7, 1974.
Apr 25-74	Filed transcript dated Feb 26, 27, 28, & March 1, 1974
Apr 25-74	Filed transcript dated March 8, 9, 10, 11, 12, 12, 1974.
Apr 25-74	Filed transcript dated March, 8, 9, 10, 11, 12, 13, 1974.
Apr 25-74	Filed transcript dated Feb 14, 15, 16, 18, 1974.
Apr 25-74	Filed transcript dated Feb 8, 11, 12, 13, 1974.
Apr 25-74	Filed transcript dated Feb 23, 25, 26, 27 1974. ....
Apr. 25-74	Filed order that the Warden of Federal Penitentiary Atlanta, Ga. permit Martin Jay Siegel, Esq. to confer with JOHN SPRINGER.....Duffy, J.
Apr. 22-74	VINCENT D'AMICO - Filed notice of appeal. Copy given to U.S. Atty. and mailed to deft at Federal Detention NYC...Leave to appeal in forma pauperis granted. Duffy, J. Ent. 4-26-74
Apr. 22-74	HENRY SALLEY - Filed notice of appeal. Copy given to U.S. Atty. and mailed to deft. at Federal Detention NYC...Leave to appeal in forma pauperis granted..Duffy, J. Ent. 4-26-74

- See Over -

DATE	PROCEEDINGS
3-14-74	Filed(March 9-74) Court exhibit #79id note from jury ordered sealed and placed in vault rm. 602.....Duffy, J.
3-14-74	FRANK PELLIGRINO - Mailed Orig. CJA copy 1 to the A.O.Wash.D.C.For payment of I.Rochman Esq.....Duffy,J.
3-18-74	ROBINSON, GAMBIA, SPRINGER, SALLEY, MARCHESE, ALON AND WARE - FILED AND MAILED COPY 2 OF THE CJA TO THE A.O. FOR (ADLER REPORTING SERVICE IS PARK ROW), SERVICES AS TO EACH DEFT. VOUCHERS APPROVED. DUFFY
3-20-74	Filed in Court on Jan.7-74 Govt's memorandum of law in opposition to deft SPRINGER'S motion to suppress.
3-20-74	Filed in Court on Jan.7-74 affdvt.of Thomas Fortuin,AUSA dtd. 1-7-74.
3-20-74	Filed defense contention for Frank Pugliese
3-20-74	Filed contentions for Joseph Dinapoli
3-20-74	Filed Govt's supplemental requests to charge
3-20-74	Filed Angelo Mamone's requests to charge
3-20-74	Filed deft Mamone's evidentiary request to charge
3-20-74	Filed TRAMUNTI requested modifications to Courts proposed charge
3-20-74	Filed Govts objections to proposed charge
3-20-74	Filed CHRISTIANO and INGLESE requests for additions to the proposed charge
3-20-74	Filed MARCHESE'S suggestions to Court's proposed charge
3-20-74	Filed TRAMUNTI supplemental requests
3-20-74	Filed W.ROBINSON request to charge
3-20-74	Filed J.GAMBIA'S requests to charge
3-20-74	Filed CHRISTIANO'S request to charge
3-20-74	Filed requested factual charge and contentions of J.CERIALE
3-20-74	Filed FRANK RUSSO requests to charge
3-20-74	Filed Govt's memo of law(On out-of-court identification)
3-20-74	Filed Govt's request to charge.
3-20-74	Filed order....Applications of C.Pugliese and D.Christiano to <del>zaza</del> withdraw remand of them****The applications are denied.....Duffy, J.
3-20-74	J.MARCHESE - Filed motion pursuant to rule 29a F.R.Crim.p. with MEMO ENDORSED The relief requested in the within motion was granted in open Court on March 4-74.....Duffy, J.
3-20-74	J.SPRINGER - Filed memo endorsed on motion filed 1-3-74....Motion denied in open Court after a hearing.....Duffy, J.
3-22-74	JOHN GAMBIA - Filed order***the deft was convicted in this case***He now seeks to have the Court vacate that order and release him on bail. The motion is denied in all respects.....Duffy, J.....
3-28-74	J.GAMBIA - Filed CJA appointment of Southern Dist.Court Reporters.
3-29-74	J.SPRINGER - Filed order the deft seeks to have the Court vacate remand order*** the motion must be denied in all respects....Duffy, J.